



Gas Supply Act 2003

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Queensland

Gas Supply Act 2003

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Gas Supply Act 2003

[as amended by all amendments that commenced on or before 1 July 2008]

An Act about the transport and supply of processed natural gas, and for other purposes

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *Gas Supply Act 2003*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Purpose and application of Act

3 Main purposes of Act

- (1) The main purposes of this Act are to—
 - (a) implement the franchising and licensing principles under clauses 13 and 14 of the national gas agreement; and
 - (b) promote efficient and economical processed natural gas supply; and

- (c) protect customers in reticulated processed natural gas markets.
- (2) The purposes under subsection (1)(b) and (c) are achieved by—
 - (a) regulating the distribution and retail markets for reticulated processed natural gas; and
 - (b) providing, under chapter 4A, for the appointment of a gas retail market operator; and
 - (c) providing, under chapter 5A, for the making of industry codes for reticulated processed natural gas markets.

Note—

This Act also includes particular provisions about LPG distribution pipelines and LPG distribution systems. See sections 75, 75A, 131A, 258, 289, 295 and 297 to 299.

4 Gas-related matters to which Act does not apply

- (1) This Act does not—
 - (a) provide for the safety of persons involved in, or who may be affected by, the supply or use of processed natural gas; or
 - (b) provide for the measurement or quality of processed natural gas; or
 - (c) regulate gases other than—
 - (i) processed natural gas; and
 - (ii) LPG, in relation to LPG distribution pipelines and LPG distribution systems.
- (2) This Act provides for access to a distribution pipeline or system only to the extent of the physical connection, or the opening of the connection, to the pipeline or system.¹

¹ For other laws about access to a distribution pipeline or system, see the Gas Pipelines Access Law, the *Queensland Competition Authority Act 1997* and the *Trade Practices Act 1974* (Cwlth).

- (3) Other than for chapter 2, part 6,² and chapter 4, this Act does not provide for or regulate transmission pipelines.³

5 Act binds all persons

- (1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) However, the Commonwealth or a State can not be prosecuted for an offence against this Act.

6 Act does not affect other rights or remedies

- (1) Subject to sections 241, 256, 315 and 316, this Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.⁴
- (2) Without limiting subsection (1), compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.
- (3) In addition, a breach of an obligation under this Act does not, of itself, give rise to an action for breach of statutory duty or another civil right or remedy.
- (4) This Act does not limit a court's powers under the *Penalties and Sentences Act 1992* or another law.

2 Chapter 2, part 6 (Market operating arrangements in natural gas market) was omitted by 2006 No. 60 s 103.

3 Chapter 4 (Sufficiency of supply)

4 Sections 241 (Limitation of industry participant's liability because of compliance with plan), 256 (Liability of recipient for processed natural gas supplied under direction), 315 (Protection from civil liability for particular persons) and 316 (Limitation of liability of distributors and retailers)

Part 3 Interpretation

Division 1 Dictionary

7 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

Division 2 Key definitions

Subdivision 1 The regulator

8 Who is the *regulator*

The chief executive of the department is the *regulator*.

Subdivision 2 Processed natural gas

11 What is *processed natural gas*

Processed natural gas is a substance that—

- (a) is in a gaseous state at standard temperature and pressure; and
- (b) consists of naturally occurring hydrocarbons and other substances; and
- (c) is more than half methane; and
- (d) has been processed to be suitable for consumption.

Subdivision 3 Pipelines and pipeline systems

12 What is a *transmission pipeline*

A *transmission pipeline* is a pipeline operated, or to be operated, for the primary purpose of conveying processed natural gas directly to a market after it has been processed, whether or not it is subsequently processed or reprocessed.

13 What is a *distribution pipeline*

A *distribution pipeline* is a pipeline that—

- (a) transports processed natural gas as—
 - (i) part of a reticulation system within a processed natural gas market; or
 - (ii) a single point-to-point pipeline to a specific commercial or industrial facility; and
- (b) is not a transmission pipeline.

14 What is a *distribution system*

- (1) A *distribution system* is a system of distribution pipelines and meters and other equipment used for, or in connection with, the supply of processed natural gas to more than 1 customer within a processed natural gas market.
- (2) However, a *distribution system* does not include—
 - (a) pipelines connected from the exit point of a meter installed for a customer's premises; or
 - (b) appliances or equipment connected to pipelines mentioned in paragraph (a).

15 When processed natural gas is *reticulated*

Processed natural gas is *reticulated* if it is supplied by way of a distribution pipeline.

Subdivision 4 Customers

16 Who is a *customer*

- (1) A *customer* is a person who receives, or wants to receive, reticulated processed natural gas.
- (2) However, a receiver is only a customer if the receiver's premises has a processed natural gas installation that, to the reasonable satisfaction of the distributor whose distribution area includes the premises, is capable of receiving supply directly from a distribution system.

17 Types of customers

- (1) A *small customer*, for premises, is a customer prescribed under a regulation to be a small customer for the premises.
- (2) A regulation made under subsection (1) may prescribe who is a small customer for premises by reference only to a stated consumption threshold.
- (3) A *large customer*, for premises, is a customer other than a small customer for the premises.
- (4) An *excluded customer*, for premises, is a customer prescribed under a regulation to be an excluded customer for the premises.

Subdivision 5 Customer connection and retail services

19 What are *customer connection services*

- (1) A person provides *customer connection services* to premises by—
 - (a) either—
 - (i) if the premises are not already connected to a distribution pipeline or system—physically connecting the premises to the pipeline or system;
 - or

- (ii) if the premises are already connected to a distribution pipeline or system—opening a physical connection to the pipeline or system to allow reticulated processed natural gas to be transported to the premises by way of the pipeline or system; and
 - (b) leaving the connection open to allow processed natural gas to be transported to the premises by way of the pipeline or system.
- (2) The provision of customer connection services does not include the transportation of processed natural gas.

20 What are *customer retail services*

- (1) A person provides *customer retail services* to someone else's premises by selling reticulated processed natural gas to the other person at the premises.
- (2) Also, if the person does not arrange for the provision of customer connection services to the premises, *customer retail services* includes arranging, as the agent of the other person, for a distributor to provide the customer connection services.

Subdivision 6 Distribution authorities and distributors

21 What is a *distribution authority*

A *distribution authority* authorises its holder to—

- (a) transport processed natural gas through a distribution pipeline or system; and
- (b) provide customer connection services to the premises of others.

22 Distributors and references to distributors

- (1) The *distributor* for—
 - (a) a distribution authority—is its holder; or

- (b) a customer—is the person who holds a distribution authority and provides customer connection services to the customer; or
 - (c) premises—is the person who holds a distribution authority and provides customer connection services to a customer at the premises; or
 - (d) gas infrastructure is—
 - (i) if the infrastructure is the subject of a distribution authority—the person who holds the authority; or
 - (ii) if the infrastructure is an LPG pipeline or LPG distribution system—the LPG distributor who owns or operates the pipeline or system;
 - (e) a distribution officer—is the distributor or LPG distributor that appointed the officer.⁵
- (2) Otherwise, a reference to a **distributor** is a reference to a person who holds a distribution authority.

23 Types of distribution authority and their distributors

- (1) A **point-to-point distribution authority** authorises the distributor to—
 - (a) transport, through a distribution pipeline, processed natural gas from one stated point to another; and
 - (b) provide a stated customer with customer connection and retail services.⁶
- (2) An **area distribution authority** authorises the distributor to—
 - (a) transport, using a distribution system, processed natural gas within a stated area; and
 - (b) provide customer connection services to premises in the area.

5 For when a distribution authority is required, see section 286 (Unlawfully operating distribution pipeline).

See also section 72 (Consequence of exercising powers under mortgage).

6 See also section 288(2)(a) (Unlawfully selling reticulated processed natural gas).

- (3) The holder of an area distribution authority is called an *area distributor*.
- (4) The area mentioned in subsection (2) is called the *distribution area* for the area distribution authority.

Subdivision 7 Retail authorities and retailers

24 What is a *retail authority*

A *retail authority* authorises its holder to provide customer retail services to its customers.

25 Retailers and references to retailers

- (1) The *retailer* for—
 - (a) a retail authority—is its holder; or
 - (b) a customer—is the person who holds a retail authority and provides customer retail services to the customer; or
 - (c) premises—is the person who holds a retail authority and provides customer retail services to a customer at the premises.⁷
- (2) Otherwise, a reference to a *retailer* is a reference to a person who holds a retail authority.

26 Types of retail authority and their retailers

- (1) An *area retail authority* is a retail authority issued for a stated area.
- (2) An *area retailer* is a retailer who holds an area retail authority.
- (3) The area mentioned in subsection (1) is called the *retail area* for the authority.

⁷ For when a retail authority is required, see section 288 (Unlawfully selling reticulated processed natural gas).

See also section 196 (Consequence of exercising powers under mortgage).

- (4) A **general retail authority** is a retail authority issued for no particular area.
- (5) A **general retailer** is a retailer who holds a general retail authority.

Chapter 2 Processed natural gas distribution

Part 1 Distribution authorities

Division 1 Applying for and obtaining distribution authority

Subdivision 1 Application

27 Who may apply for distribution authority

- (1) A person may, in the approved form, apply to the regulator for a distribution authority.
- (2) However, a retailer can not apply for a distribution authority to provide customer connection services relating to processed natural gas to be transported through a pipeline if the retailer sells processed natural gas transported through a covered pipeline.⁸

28 Requirements for application

The application must—

⁸ See also sections 41 (Ring fencing requirement) and 57 (Conditions for amendment, cancellation or suspension).

- (a) if it is for a point-to-point distribution authority—describe the route of the pipeline to be the subject of the authority; and
- (b) if it is for an area distribution authority—describe the area to be the subject of the authority; and
- (c) state a proposed start day for the transport of processed natural gas through the distribution pipeline or system to be the subject of the authority; and
- (d) be accompanied by the fee prescribed under a regulation.

29 Public notice by regulator and submissions

- (1) This section does not apply if—
 - (a) the applicant holds a corresponding authority for the distribution authority; or
 - (b) the distribution authority is a point-to-point distribution authority.
- (2) Before deciding the application, the regulator must—
 - (a) publish in a Statewide newspaper a notice stating each of the following—
 - (i) that an application for a distribution authority has been made;
 - (ii) the applicant's name;
 - (iii) a period of at least 20 business days during which anyone may make written submissions to the regulator about the application;
 - (iv) where the application, other than any part of the application that is FOI exempt matter, may be inspected; and
 - (b) consider written submissions about the application made to the regulator within the stated period.

31 Deciding application

- (1) The regulator must decide whether to grant or refuse the application.
- (2) If the regulator decides to grant the application, the regulator may impose conditions on the distribution authority the regulator considers appropriate.⁹

32 Criteria for deciding application

- (1) The regulator may decide to grant the application only if satisfied the applicant is a suitable person to hold the distribution authority.
- (2) For subsection (1), the regulator may consider any of the following (the *suitability criteria*), to the extent they are relevant to the applicant's competence to hold the distribution authority—
 - (a) ability to provide an adequate level of customer connection services;
 - (b) financial capacity;
 - (c) commercial and other dealings and the standard of honesty and integrity shown in the dealings;
 - (d) failure to perform contractual or statutory obligations and the reasons for the failure;
 - (e) criminal history;
 - (f) technical expertise;
 - (g) knowledge of, or experience in, the gas or energy industries;
 - (h) if the applicant is a corporation—the matters mentioned in paragraphs (a) to (g) for persons who are executive officers of, or substantial shareholders in, the corporation.
- (3) However, the regulator may, without regard to any of the suitability criteria, decide the applicant is a suitable person to

⁹ See also division 2 (Distribution authority conditions).

hold the distribution authority if the applicant holds a corresponding authority.

- (4) In deciding the application, the regulator must consider any relevant government policies about energy issues.

34 Term of authority

- (1) This section applies if the regulator decides to grant the application.
- (2) The regulator may decide to grant the authority for a stated term.
- (3) If no term is decided for a distribution authority, it continues in force unless cancelled or surrendered under this part.

Subdivision 2 Steps after deciding application

35 Notice of decision to grant application

- (1) If the regulator decides to grant the application, the regulator must, as soon as practicable, give the applicant notice (*decision notice*) stating each of the following—
 - (a) the decision;
 - (b) the conditions the regulator has decided to impose on the authority;
 - (c) any other matter relevant to the grant of the authority;
 - (d) a period after the giving of the decision notice for the applicant to give the regulator notice (*acceptance notice*) that the applicant agrees to the conditions, or the conditions with changes to which the regulator has agreed;
 - (e) the application will be taken to have lapsed unless the applicant gives acceptance notice within the period or later period as extended by the regulator.
- (2) The stated period must end at least 20 business days after the applicant is given the decision notice.

- (3) The regulator may, by notice to the applicant given before the stated period ends, extend the period for giving an acceptance notice.

36 Lapsing of application if conditions not accepted

The regulator is taken to have decided to refuse the application if—

- (a) the regulator has given the applicant a decision notice; and
- (b) the applicant has not given the regulator an acceptance notice within the period stated in the notice, or if the regulator has extended the period for giving an acceptance notice, the extended period.

37 Issue and public notice of authority

- (1) This section applies if the applicant gives the regulator an acceptance notice within the period stated in the notice, or if the regulator has extended the period for giving an acceptance notice, the extended period.
- (2) The regulator must, as soon as practicable—
 - (a) issue the applicant the distribution authority; and
 - (b) publish a notice about the authority in a Statewide newspaper.
- (3) The notice must state—
 - (a) that the applicant has been issued a distribution authority; and
 - (b) each of the following about the authority—
 - (i) its type;
 - (ii) if it is a point-to-point distribution authority—the points;
 - (iii) if it is an area distribution authority—its distribution area; and
 - (c) the conditions of the authority, or where they may be inspected.

38 Information notice about refusal

If the regulator decides to refuse the application, the regulator must, as soon as practicable, give the applicant an information notice about the decision.

Division 2 Distribution authority conditions**39 Operation of div 2**

- (1) This division imposes conditions on each distribution authority that apply as well as any conditions stated in the authority.
- (2) If an imposed condition conflicts with a condition stated in the authority, the imposed condition prevails to the extent of the inconsistency.
- (3) As well as imposing a condition, section 43 also imposes a penalty.

40 General conditions

A distributor must—

- (a) take appropriate account of the environmental effects of activities carried out under the distributor's distribution authority; and
- (b) pay amounts required to be paid under the authority or this Act; and
- (c) in carrying out activities under the authority, comply with this Act, the Petroleum and Gas (Production and Safety) Act and all other relevant laws; and
- (d) in carrying out gas infrastructure work, comply with part 2.

41 Ring fencing requirement

A distributor must not sell processed natural gas transported through a pipeline if the distributor provides customer

connection services relating to processed natural gas transported through a covered pipeline.¹⁰

42 Obligation to operate and maintain distribution pipes

- (1) This section imposes obligations on a distributor for each distribution pipeline the subject of the distributor's distribution authority.
- (2) If, under this Act or another Act, someone else is entitled to have the distributor transport processed natural gas through the pipeline, the distributor must operate, maintain and protect the pipeline to ensure the transportation is adequate, reliable and safe.
- (3) Otherwise, the distributor must ensure the pipeline is operated and maintained and protected so that it is able to be used for the adequate, reliable and safe connection, transport and sale of processed natural gas.
- (4) In this section—
maintain includes repair and replace as necessary.

43 Restriction for area distributors

An area distributor must not provide customer connection services to a customer outside the distribution area of the distributor's distribution authority unless the services are provided under another distribution authority.

Maximum penalty—500 penalty units.

46 Standard for distribution pipes

A distributor must ensure each distribution pipe, or each distribution pipeline in a distribution system, the subject of the distributor's distribution authority is built in a way that complies with the Petroleum and Gas (Production and Safety) Act and any other relevant Act.

¹⁰ See also sections 27 (Who may apply for distribution authority) and 57 (Conditions for amendment, cancellation or suspension).

47 Inquiry practices and procedures

- (1) A distributor must establish and maintain appropriate practices and procedures to allow inquiries by customers and the public to be addressed or appropriately responded to within 5 business days.
- (2) For subsection (1) an appropriate response means giving the inquirer notice or telling the inquirer—
 - (a) the work that needs to be done to address the inquiry; and
 - (b) the period needed to address it.

48 Contingency practices and procedures

- (1) A distributor must establish and maintain appropriate practices and procedures to manage the prompt and efficient handling of all of the following reported to the distributor by anyone—
 - (a) emergency incidents;
 - (b) gas leakages;
 - (c) processed natural gas outages;
 - (d) faults and difficulties in the distributor's gas infrastructure;
 - (e) unplanned interruptions to processed natural gas transport;
 - (f) other situations relevant to the distributor that relate to safety.
- (2) A distributor must have a telephone number at which customers can report to the distributor matters mentioned in subsection (1)—
 - (a) at any time; and
 - (b) for the cost of a local telephone call.
- (3) Each account of the distributor must include the number.
- (4) The number may be the number of a relevant retailer from which the call is transferred to the distributor.

- (5) An automated answering telephone service complies with subsection (2) only if it provides for the transfer of calls to a human being.

49 Compliance with contingency supply plan requirements

A distributor must comply with chapter 4, part 2.¹¹

50 Participation in retailer of last resort scheme

A distributor must comply with the retailer of last resort scheme to the extent it applies to the distributor.

50A Compliance with industry codes

A distributor must comply with any industry code that applies to the distributor.

50B Membership of energy ombudsman scheme

A distributor must pay any amount that, under the *Energy Ombudsman Act 2006*, it must pay the energy ombudsman.

51 Conditions imposed under a regulation

- (1) A distributor must comply with—
- (a) any conditions prescribed under a regulation for, or relating to, the provision of customer connection services; or
 - (b) any code, intergovernmental agreement, protocol or other agreement prescribed under a regulation.
- (2) A code or agreement may be prescribed only if it relates to the provision of customer connection services.

¹¹ Chapter 4, part 2 (Contingency supply plans)

Division 3 Amendment, cancellation and suspension of distribution authority

Subdivision 1 Amendment by regulator

52 Amendments for which proposed action notice is not required

The regulator may amend a distribution authority at any time by giving the distributor notice of the amendment and recording particulars of the amendment in the register of authorities if the amendment—

- (a) is to correct a clerical or formal error; or
- (b) does not affect the interests of the distributor or anyone else and the distributor has, in writing, agreed to the amendment.

53 Amendments for which proposed action notice is required

The regulator may amend a distribution authority if—

- (a) the regulator considers the amendment necessary or desirable; and
- (b) the procedure under subdivision 5 is followed.

54 Imposed condition can not be amended

The regulator can not amend a condition of a distribution authority imposed under division 2.

Subdivision 2 Amendment by application

55 Applying for amendment

- (1) A distributor may, in the approved form, apply to the regulator to amend its authority in a stated way, other than to amend a condition imposed under division 2.

- (2) The application must be accompanied by the fee prescribed under a regulation.
- (3) Subsection (1) does not limit section 69(3).¹²

56 Deciding application

- (1) The regulator must decide to make or refuse to make the amendment.
- (2) If the decision is to make the amendment, the regulator must, as soon as practicable, make the amendment to the distribution authority and give the applicant notice of the decision.
- (3) If the decision is to refuse to make the amendment, the regulator, must, as soon as practicable, give the applicant an information notice about the decision.

Subdivision 3 Amendment, cancellation or suspension by regulator

57 Conditions for amendment, cancellation or suspension

- (1) The regulator may amend, cancel or suspend a distribution authority if—
 - (a) an event mentioned in subsection (2) has happened; and
 - (b) either—
 - (i) for immediate suspension—the procedure under section 58 is followed; or
 - (ii) for cancellation or suspension other than immediate suspension—the procedure under subdivision 5 is followed.
- (2) For subsection (1), the event is that the distributor—
 - (a) obtained the authority because of a materially false or misleading declaration or representation, made orally or in writing; or

12 Section 69 (Deciding transfer application)

- (b) is, or is likely to become, unsuitable to hold, or continue to hold, the authority, including, for example because of a contravention of any of the following by the distributor or, if the distributor is a corporation, any executive officer of, or substantial shareholder in, the corporation—
- (i) this Act;
 - (ii) the Petroleum and Gas (Production and Safety) Act or another relevant Act;
 - (iii) a direction given under this Act, the Petroleum and Gas (Production and Safety) Act or another relevant Act;
 - (iv) the authority;
 - (v) an industry code, in a material way; or

Note—

For criteria for deciding a material contravention, see section 270Q.

- (c) has contravened, or is contravening, section 41;¹³ or
 - (d) has used the authority for a purpose other than for a purpose for which it was issued.
- (3) In deciding whether the distributor is a suitable person to hold, or continue to hold, the authority the regulator must have regard to the suitability criteria.

Subdivision 4 Procedure for immediate suspension

58 Immediate suspension

- (1) The regulator may, by notice (*suspension notice*) to the distributor, immediately suspend a distribution authority if the regulator reasonably believes—
- (a) a ground exists to suspend or cancel the authority; and

¹³ Section 41 (Ring fencing requirement)

- (b) the circumstances are so extraordinary that it is imperative to immediately suspend the authority to control or prevent—
 - (i) a significant adverse economic or social impact on the State or a part of the State; or
 - (ii) a danger to the public.
- (2) The suspension notice must—
 - (a) state each of the following—
 - (i) that the authority is suspended immediately;
 - (ii) the grounds for the suspension;
 - (iii) the facts and circumstances forming the basis for the grounds;
 - (iv) the suspension period;
 - (v) that the distributor may make written submissions to the regulator to show why the suspension should end; and
 - (b) include, or be accompanied by, an information notice about the decisions to give the notice and to fix the suspension period.
- (3) The suspension period must not be more than 40 business days.
- (4) The suspension has effect immediately after the distributor is given the suspension notice.
- (5) The authority is ineffective during the suspension period.

Subdivision 5 Procedure for amendment, cancellation or suspension other than immediate suspension

59 Application of sdiv 5

This subdivision applies if—

- (a) under section 53, the regulator proposes to amend a distribution authority; or
- (b) the regulator proposes to cancel or suspend a distribution authority, other than an immediate suspension under section 58.

60 Notice of proposed action

- (1) The regulator must give the distributor a notice stating each of the following—
 - (a) the action (the *proposed action*) the regulator proposes to take under this division;
 - (b) the grounds for the proposed action;
 - (c) the facts and circumstances that are the basis for the grounds;
 - (d) if the proposed action is to amend—the proposed amendment;
 - (e) if the proposed action is to suspend—the proposed suspension period;
 - (f) that the distributor may make, within a stated period, written submissions to show why the proposed action should not be taken.
- (2) The stated period must end at least 20 business days after the notice is given.
- (3) The notice may be given for a retail authority the subject of an immediate suspension.

61 Considering submissions

- (1) The regulator must consider any written submission made under section 60 by the distributor within the period stated in the notice.
- (2) If the regulator at any time decides not to take the proposed action, the regulator must, as soon as practicable, give the distributor notice of the decision.

62 Decision on proposed action

If, after complying with section 61, the regulator still believes a ground exists to take the proposed action, the regulator may decide to—

- (a) if the proposed action was to amend—make the amendment; or
- (b) if the proposed action was to suspend for a stated period—suspend for no longer than the proposed suspension period; or
- (c) if the proposed action was to cancel—
 - (i) cancel the distribution authority; or
 - (ii) suspend it for a stated period.

63 Notice and taking of effect of proposed action decision

- (1) The regulator must, as soon as practicable after making a decision under section 62, give the distributor an information notice about the decision.
- (2) The decision takes effect on the later of the following—
 - (a) the day the information notice is given;
 - (b) a later day of effect stated in the notice.
- (3) However, if the decision was to amend, cancel or suspend because of a conviction, the amendment, cancellation or suspension—
 - (a) does not take effect until—
 - (i) the period to appeal against the conviction ends; and
 - (ii) if an appeal is made against the conviction—the appeal is finally decided or is otherwise ended; and
 - (b) has no effect if the conviction is quashed on appeal.

Division 4 Dealings with distribution authority

Subdivision 1 Renewals

64 Applying for renewal

- (1) This section applies to a distribution authority that is issued for a term.
- (2) The distributor may apply to the regulator to renew the authority for a stated term or to renew it without a term.
- (3) An application under this section—
 - (a) must be made in the approved form and accompanied by the fee prescribed under a regulation; and
 - (b) can not be made if the authority has ended.

65 Deciding renewal application

- (1) The regulator must decide whether to grant or refuse the application.
- (2) Division 1 (other than section 27) applies to the application as if it were an application for the authority.¹⁴

66 Continuing effect of authority for renewal application

If the term of the distribution authority ends before the application is decided, despite the ending of the term, the authority continues in force until—

- (a) the start of any renewal of the authority; or
- (b) the applicant is given an information notice about a decision to refuse the application; or
- (c) the application is withdrawn; or
- (d) the authority is cancelled under this Act.

¹⁴ Division 1 (Applying for and obtaining distribution authority)
Section 27 (Who may apply for distribution authority)

Subdivision 2 Transfers

67 Transfer only by application

- (1) A distribution authority may be transferred only under this subdivision.
- (2) A purported transfer of a distribution authority not made under this subdivision is of no effect.¹⁵

68 Applying for transfer

- (1) A distributor may apply to the regulator to transfer the distributor's authority.
- (2) The application must be—
 - (a) in the approved form; and
 - (b) made by the distributor and the proposed transferee; and
 - (c) accompanied by the fee prescribed under a regulation.

69 Deciding transfer application

- (1) The regulator may decide to grant the application only if the regulator is satisfied the proposed transferee is a suitable person to hold the authority.
- (2) For subsection (1), the regulator may consider any suitability criteria to the extent it is relevant to the proposed transferee's competence to hold the distribution authority.
- (3) The regulator may, in granting the application, impose conditions on the authority.
- (4) If the regulator decides to refuse the application or impose a condition on the authority, the regulator must, as soon as practicable, give the applicants an information notice about the decision.

¹⁵ See also section 301 (Additional consequences of unlawfully operating distribution pipe).

- (5) Subsection (4) does not apply for a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicants.

Subdivision 3 Mortgages

70 Mortgage of distribution authority

A distributor may mortgage the distributor's distribution authority without the approval of, or notice to, the regulator.

71 Notice of intention to exercise powers under mortgage

- (1) This section applies if a mortgage has been granted over a distribution authority and the distributor has defaulted under the mortgage.
- (2) The mortgagee may exercise its powers under the mortgage only if the mortgagee has given the regulator at least 20 business days notice of the mortgagee's intention to exercise powers under the mortgage that relate to the authority.
- (3) Any purported exercise of a power under the mortgage relating to the authority in contravention of subsection (2) is of no effect.

72 Consequence of exercising powers under mortgage

If a mortgagee under a mortgage over a distribution authority exercises any power under the mortgage relating to the authority, this Act applies to the mortgagee as if the mortgagee were the distributor under the authority.

Subdivision 4 Surrenders

73 Surrenders

- (1) A distributor may surrender its authority only if the regulator has, on the distributor's application, approved the surrender.

- (2) The application must be in the approved form and accompanied by the fee prescribed under a regulation.
- (3) The regulator—
 - (a) may impose conditions on giving the approval; and
 - (b) must fix a time, no later than 6 months after deciding the application, for the surrender to take effect.
- (4) If the regulator decides to refuse the application or impose a condition on the surrender, the regulator must, as soon as practicable, give the applicant an information notice about the decision.
- (5) Subsection (4) does not apply for a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicant.

Part 2 Gas infrastructure

Division 1 Preliminary

75 What is *gas infrastructure* and *gas infrastructure work*

- (1) *Gas infrastructure* is the whole or any part of—
 - (a) a distribution pipeline or system the subject of a distribution authority; or
 - (b) an LPG distribution pipeline; or
 - (c) an LPG distribution system.
- (2) *Gas infrastructure work* is the installation, operation, maintenance, repair, alteration or removal of gas infrastructure.
- (3) For subsection (2), installation includes installation by way of excavation.

75A References to distributor in pt 2 includes a reference to LPG distributor

In this part, a reference to a distributor includes a reference to an LPG distributor.

76 What is a *public entity*

A *public entity* is—

- (a) a government entity under the *Government Owned Corporations Act 1993*, section 5; or
- (b) a local government.

77 Publicly controlled places and their public entities

(1) A *publicly controlled place* is—

- (a) a State-controlled road under the *Transport Infrastructure Act 1994*; or
- (b) a place for which a public entity is responsible that—
 - (i) the public is entitled to use; or
 - (ii) is open to members of the public; or
 - (iii) is used by the public, whether or not on payment of money.

(2) However, *publicly controlled place* does not include any of the following under the *Transport Infrastructure Act 1994*—

- (a) busway land;
- (b) light rail land;
- (c) a railway;
- (d) rail corridor land.¹⁶

(3) The *public entity* for a publicly controlled place is the public entity immediately and primarily responsible for the place.

16 For provisions relevant to gas infrastructure works for places mentioned in subsection (2), see the *Transport Infrastructure Act 1994*, chapter 6 (Road transport infrastructure), chapter 9, part 4, divisions 4 (Public utility plant) and 5 (Use of busway land) and chapter 10, part 4, divisions 3 (Public utility plant) and 4 (Use of light rail land).

Division 2 Carrying out gas infrastructure work on publicly controlled places

Subdivision 1 When work may be carried out

78 Right to carry out work on publicly controlled place

Subject to sections 79 and 88 and subdivision 2, a distributor may carry out gas infrastructure work on a publicly controlled place.

79 Requirements for carrying out work

- (1) A distributor may carry out gas infrastructure work on a publicly controlled place only if—
 - (a) the public entity has given its written approval for the carrying out of the work; or
 - (b) the carrying out of the work is necessary because of an emergency.
- (2) If the work is carried out because of an emergency, the distributor must, as soon as practicable, give the entity notice of the work.

80 Obtaining public entity's approval

- (1) The distributor may, in writing, apply to the public entity for approval to carry out the gas infrastructure work.
- (2) The application must—
 - (a) describe the work and how it is proposed to be carried out; and
 - (b) give particulars of where it is to be carried out; and
 - (c) be supported by other relevant information, reasonably required by the entity, to enable it to consider the application.

- (3) The entity must, within 30 business days after receiving the information mentioned in subsection (2)(c), decide to grant or refuse the approval.
- (4) The entity must not unreasonably refuse to grant the approval.

81 Conditions of approval

- (1) The public entity may impose conditions on the approval it considers are reasonable.

Example of a possible condition—

a condition that, to minimise interference with public access to the place, the work may be carried out only on stated days or at stated times

- (2) However, a condition about an alignment for gas infrastructure on, or proposed to be built on, a road must ensure the alignment is—
 - (a) situated to ensure reasonable protection for the infrastructure; and
 - (b) if practicable, on the footpath or verge of the road.

Subdivision 2 Obligations in carrying out work

82 Application of sdiv 2

This subdivision applies if a distributor is carrying out gas infrastructure work on a publicly controlled place.

83 Guarding

- (1) This section applies if the distributor has opened or broken up (the *interference*) the place, or any part of the place.
- (2) The distributor must, at all times while the interference continues, ensure—
 - (a) the interference is barricaded and guarded; and
 - (b) signs and lights sufficient to warn and guide the public are set up and maintained against or near the interference.

- (3) If required by the public entity, the distributor must also set up and maintain against or near the interference additional warning or protection devices to safeguard the public while the interference continues.
- (4) The requirement may be made—
 - (a) before or during the carrying out of the work; and
 - (b) as well as any condition imposed under section 81.

84 Warning signs on roads

If the work is carried out on a road, lights and signs set up or maintained to safeguard the public must be the appropriate official signs under the *Transport Operations (Road Use Management) Act 1995*.

85 General obligations in carrying out work

- (1) The distributor must—
 - (a) complete the work as soon as practicable; and
 - (b) restore, as nearly as practicable, the relevant part of the place to the condition it was in before the work started; and
 - (c) remove any rubbish or surplus earth caused by the work; and
 - (d) comply with—
 - (i) conditions the public entity has imposed on any approval it has given to carry out the work; and
 - (ii) any relevant provisions of the Petroleum and Gas (Production and Safety) Act and any other relevant law.
- (2) If, in carrying out the work, the distributor causes damage to the place, the distributor must fix the damage as soon as practicable.

86 Maintenance

- (1) This section applies if the distributor has opened or broken up the place or any part of it and has, under section 85, restored the place or part.
- (2) The distributor must carry out maintenance to ensure the place or part it is kept in good repair until the later of the following periods to end—
 - (a) the period that ends 3 months after the restoration was finished;
 - (b) if, because of the carrying out of the work or the restoration, the ground at the place or part subsides within the 3 months, the period that ends on the earlier of the following—
 - (i) the day the subsidence ends;
 - (ii) the first anniversary of the day the restoration was finished.
- (3) The maintenance must be carried out in the way agreed between the public entity and the distributor.

Subdivision 3 Work directions**87 Power to give work direction**

- (1) This section applies if—
 - (a) a distributor is carrying out, or has carried out, gas infrastructure work on a publicly controlled place; and
 - (b) the public entity reasonably considers work should be, or should have been, carried out to ensure compliance with a condition imposed under section 81 or an obligation under subdivision 2.
- (2) The entity may give the distributor a notice (a *work direction*) directing the distributor to carry out stated work to comply with the condition or obligation within a stated reasonable period.

- (3) The work direction must—
 - (a) identify the condition or obligation; and
 - (b) include, or be accompanied by, an information notice about the decision to give the direction.

88 Compliance with work direction

- (1) A distributor to whom a work direction has been given must comply with the direction to the reasonable satisfaction of the public entity that gave the direction.
- (2) If the distributor does not comply with subsection (1), the entity may carry out the relevant work.
- (3) In carrying out the work, the entity must comply with any relevant provisions of the Petroleum and Gas (Production and Safety) Act and any other relevant law.

89 Costs of carrying out directed work

- (1) A distributor to whom a work direction has been given must bear the costs of complying with the direction.
- (2) If, under section 88(2), the public entity has carried out the relevant work, it may recover from the distributor as a debt the amount of its reasonable costs of carrying out the work.

Division 3 Public entity work

90 Application of div 3

This division applies if a public entity for a publicly controlled place proposes to do work (*public entity work*) that is likely to affect the safety, location or operation of gas infrastructure.

91 Requirement to consult if gas infrastructure affected

- (1) The public entity must give the distributor for the gas infrastructure a notice stating—
 - (a) details of the proposed public entity work; and

- (b) that the distributor may, within a stated period, make written submissions to the entity about the proposal.
- (2) The stated period must not end before 30 business days after the notice is given.
- (3) Before deciding to make the change, the entity must consider any written submission made by the distributor within the stated period.

92 Power to require consequential work

- (1) This section applies if—
 - (a) the public entity has complied with section 91; and
 - (b) to carry out the public entity work, it is reasonably necessary for any of the following work to be done (*consequential work*)—
 - (i) changing the position of the gas infrastructure;
 - (ii) carrying out other work in relation to the gas infrastructure.
- (2) The entity may, by notice (a *consequential work requirement*), require the distributor to do the consequential work within a stated reasonable period.

93 Compliance with consequential work requirement

- (1) A distributor of whom a consequential work requirement has been made must comply with the requirement to the reasonable satisfaction of the public entity that made the requirement.
- (2) If the distributor does not comply with subsection (1), the entity may carry out the relevant consequential work.
- (3) In carrying out the work, the entity must comply with any relevant provisions of the Petroleum and Gas (Production and Safety) Act and any relevant law.

94 Costs of carrying out required consequential work

- (1) A public entity must bear the costs of complying with any consequential work requirement it makes.
- (2) If the relevant distributor has complied with section 93(1), the distributor may recover from the entity as a debt the amount of the distributor's reasonable costs of carrying out the work.

Division 4 Gas infrastructure interfering with publicly controlled place**95 Application of div 4**

This division applies if gas infrastructure on a publicly controlled place interferes with the use of the place by the public entity or the public.

96 Remedial action by public entity in emergency

If, because of an emergency, it is necessary to take action (*remedial action*) to ensure the gas infrastructure ceases to interfere with the use of the place, the public entity may take the remedial action.

97 Power to require remedial action

The public entity may, by notice (a *remedial action requirement*), require the distributor for the gas infrastructure to take remedial action within a stated reasonable period.

98 Compliance with remedial action requirement

- (1) A distributor of whom a remedial action requirement has been made must comply with the requirement to the reasonable satisfaction of the public entity that made the requirement.
- (2) If the distributor does not comply with subsection (1), the entity may take the relevant remedial action.
- (3) In taking the remedial action, the entity must comply with any relevant provisions of the Petroleum and Gas (Production and Safety) Act and any other relevant law.

99 Costs of taking required remedial action

- (1) A public entity must bear the costs of complying with any remedial action requirement it makes.
- (2) If the relevant distributor has complied with section 98(1), the distributor may recover from the entity as a debt the amount of the distributor's reasonable costs of taking the action.

Division 5 Miscellaneous provisions**100 Ownership of gas infrastructure that becomes part of land**

- (1) Gas infrastructure owned by a distributor remains the distributor's personal property despite—
 - (a) it becoming part of any land; or
 - (b) the sale or other disposal of the land.
- (2) However, subsection (1) ceases to apply if the distributor agrees that the gas infrastructure is no longer the distributor's property.
- (3) This section applies despite—
 - (a) an Act or law of a State; or
 - (b) a contract, covenant or claim of right under a law of a State.
- (4) This section ceases to apply if—
 - (a) the distribution authority is cancelled or otherwise ends; or
 - (b) the land on which the infrastructure is situated ceases to be land subject to, or in the distribution area of, the authority.
- (5) For subsection (4), if the term of the authority ends but, under section 66,¹⁷ it is continued in force, the authority only ends if, under that section, it stops being in force.

17 Section 66 (Continuing effect of authority for renewal application)

101 Compensation

- (1) This section applies if a person (the *claimant*) suffers a cost, damage or loss because of the exercise, or purported exercise, of a power under this part by a distributor.
- (2) Compensation for the cost, damage or loss is payable by the distributor to the claimant.
- (3) The compensation may be claimed and ordered in a proceeding brought in a court of competent jurisdiction.

Part 3 Customer connection services**Division 1 Preliminary****102 Application of pt 3**

This part only applies to an area distributor under an area distribution authority.

Division 2 Applying for and obtaining customer connection services**Subdivision 1 Applying for customer connection services****103 Who may apply for customer connection services**

- (1) Each person as follows may apply to a distributor for the provision of customer connection services to premises within the distributor's distribution area—
 - (a) a person who owns or occupies the premises;
 - (b) a retailer, for a customer or proposed customer of the retailer.

- (2) The application must be made in the way and give the information reasonably required by the distributor.

104 Deciding application

- (1) The distributor must decide to grant or refuse the application within—
 - (a) 10 business days after the application is made; or
 - (b) a longer period agreed between the distributor and the applicant.
- (2) The distributor must decide to grant the application unless a limit under section 109 on the obligation to provide customer connection services applies.

104A Information notice for refusal of services

If the distributor decides not provide to the premises the customer connection services applied for, the distributor must, as soon as practicable after, but within 1 month of, receiving the application give the customer an information notice about the decision.

Subdivision 2 Steps after granting application

105 Distributor's obligation to propose terms

- (1) If the distributor decides to grant the application, the distributor must, within the relevant period, tell or give the applicant notice of, each of the following—
 - (a) that the application has been granted;
 - (b) the terms on which the distributor will provide the customer connection services;
 - (c) that the applicant may ask for the terms in writing.
- (2) If the applicant asks, the distributor must, as soon as practicable, give the applicant notice of the terms.

- (3) If the distributor does not comply with subsection (1) within the relevant period the distributor is taken to have decided to refuse the application.
- (4) In this section—
relevant period means—
 - (a) 10 business days after the application is decided; or
 - (b) a longer period agreed between the distributor and the applicant within the 10 business days.

106 Connection contract

- (1) If the distributor and the applicant agree about the terms for providing the customer connection services, the agreement is called a *connection contract*.¹⁸
- (2) The agreement may be oral or written.
- (3) The making of a connection contract is subject to subdivision 3.

108 Commencement of customer connection services

- (1) If the distributor and the applicant enter into a connection contract, the distributor must, subject to section 109, start to provide the customer connection services at the time provided under this section.
- (2) Generally, the distributor must use reasonable endeavours to comply with the obligation within the required period after entering into the contract.
- (3) However, if, within the required period after entering into the contract, the distributor requires any of the following the obligation ceases—
 - (a) the giving of security for the services in an amount and a way that is fair and reasonable;
 - (b) the giving of a reasonable advance payment for the services.

¹⁸ See also section 125 (Operation of pt 4).

- (4) If the requirement is met, the distributor must use reasonable endeavours to connect the premises within the required period after meeting the requirement.
- (5) In this section—
- required period***, after entering into the contract or meeting the requirement, means—
- (a) if starting to provide the services only involves opening a physical connection to the distributor's pipeline or system—
 - (i) 10 business days; or
 - (ii) any longer period agreed to by the applicant within the 10 business days;
 - (b) if starting to provide the services involves more than opening a physical connection to the distributor's pipeline or system—
 - (i) a reasonable period; or
 - (ii) any longer period agreed to by the applicant.

109 Limits on provision of customer connection services

- (1) The distributor is not obliged to provide the customer connection services to a person's premises in any of the following circumstances—
- (a) providing the services—
 - (i) contravenes a provision of the Petroleum and Gas (Production and Safety) Act or another relevant Act about safety; or
 - (ii) contravenes a provision of the Petroleum and Gas (Production and Safety) Act or another relevant Act about gas measurement or quality; or
 - (iii) would unreasonably interfere with the connection, transport or sale of processed natural gas to other customers; or
 - (iv) is denied or limited under an insufficiency of supply direction;

- (b) the distributor has asked the person to do any of the following and the person has not complied with the request within a reasonable period—
 - (i) perform work, or changes to the person's processed natural gas installation, necessary to allow connection of the distributor's meter to measure consumption of processed natural gas;
 - (ii) provide or maintain access, equipment, facilities, space or anything else reasonably needed for the provision of the services;
 - (c) the distributor is entitled, under its connection contract or under a regulation, to disconnect customer connection services to the premises;
 - (d) a circumstance beyond the distributor's control prevents the distributor from providing the customer connection services.
- (2) The obligation ceases during any period in which the provision of the services is disconnected under a connection contract or under a dangerous situation direction under the Petroleum and Gas (Production and Safety) Act.
- (3) Also, the obligation does not apply if a regulation states the obligation does not apply.
- (4) The obligation is subject to—
- (a) any relevant insufficiency of supply declaration or insufficiency of supply direction; and
 - (b) the retailer of last resort scheme; and
 - (c) the conditions of the distributor's relevant distribution authority; and
 - (d) any relevant provision of an industry code about cooling-off periods for the provision of customer connection services.
- (5) This section does not prevent the distributor from lawfully providing the customer connection services even though it is not obliged to do so.

Subdivision 3 Requirements for connection contracts

109A General limits on what may be negotiated

- (1) A connection contract must not be inconsistent with this Act or any relevant industry code.
- (2) If—
 - (a) customer connection services relate to processed natural gas transported through a covered pipeline; and
 - (b) there is an approved access arrangement for the pipeline;a connection contract for the services must not be inconsistent with the access arrangement.
- (3) A connection contract is unenforceable to the extent it does not comply with this section.

109B Provisions for small customers

- (1) This section applies to a connection contract for the provision of customer connection services to a small customer's premises.
- (2) The contract must comply with all relevant industry code provisions about minimum terms for the provision of customer connection services to small customers.
- (3) The contract is unenforceable to the extent it does not comply with subsection (2).
- (4) If, under subsection (3), a term of the contract is unenforceable because it conflicts with a minimum term provision mentioned in subsection (2), the minimum term is taken to be a term of the contract.

109C Provisions for large customers

- (1) This section applies to a connection contract for the provision of customer connection services to a large customer's premises.

- (2) The contract must provide for the provision of the services on fair and reasonable terms.
- (3) The services are taken to be provided on fair and reasonable terms if the contract is consistent with relevant industry code provisions about minimum terms for the provision of customer connection services to small customers.

Division 3 Changes to processed natural gas installation

110 Application of div 3

This division applies if the distributor provides customer connection services to a person's premises.

111 Obligation to give information to allow proposed changes

The distributor must, if asked by the person, give the person reasonable information about the distributor's requirements to allow the person to change or replace a processed natural gas installation at the premises.

112 Applying to change connection

- (1) The person may apply to the distributor to change the connection of a processed natural gas installation at the premises to the distributor's distribution system.
- (2) The distributor must, subject to section 109, make the change within a reasonable period and on fair and reasonable terms.

Part 4 **Meter and control apparatus requirements**

125 **Operation of pt 4**

- (1) This part imposes obligations for the provision of customer connection services to small customers.
- (2) The obligations are taken to be terms of each connection contract between a distributor or retailer and a small customer.

126 **Distributor must provide meter**

- (1) The distributor must, unless the distributor and the customer otherwise agree, provide, install and maintain a meter used or to be used to measure or record reticulated processed natural gas transported to the premises.

Maximum penalty—20 penalty units.

- (2) Subsection (1) is subject to section 131.

127 **Matters that may be considered for placement**

In deciding placement of a meter the distributor may consider—

- (a) safe access; and
- (b) aesthetics; and
- (c) protection against damage from—
 - (i) mechanisms; or
 - (ii) vibration; or
 - (iii) the effects of weather; or
 - (iv) corrosive atmosphere.

128 **Placing meter on customer's premises**

- (1) The customer must, at the customer's cost—
 - (a) provide on the customer's premises space, housing, mounting and connecting facilities for each meter; and

- (b) maintain the facilities in a safe and sound condition.
- (2) The facilities must be in a position that meets the distributor's reasonable requirements.

129 Change of meter placement

- (1) This section applies if, because of building changes or similar works, the position of a meter no longer meets the distributor's reasonable requirements for its placement.
- (2) The customer must provide space, housing, mounting and connecting facilities in another position on the customer's premises that meets the requirements.
- (3) If the distributor relocates the meter to meet the requirements, the distributor may, by notice, require the customer to pay the distributor the amount of the distributor's costs reasonably incurred in relocating the meter.
- (4) If the customer does not comply with the notice, the distributor may recover the amount from the customer as a debt.

130 Customer must provide safe access

The customer must not prevent the distributor's distribution officers from safely exercising a power under section 138.

131 Alternative measurement

- (1) This section applies if the distributor reasonably believes the customer has contravened section 130 by preventing any distribution officer of the distributor from safely reading or testing a meter connected to the distributor's distribution pipeline or system.
- (2) The distributor may, by notice, require the customer to remedy the contravention within a stated period of at least 1 month.
- (3) If the customer does not comply with the notice, the distributor may install alternative metering or other equipment to measure or record reticulated processed natural gas transported to the premises by remote or other suitable ways.

- (4) Subsection (3) does not limit another remedy the distributor has against the customer.
- (5) If the distributor acts under subsection (3), the distributor may, by notice, require the customer to pay the distributor the amount of the distributor's costs reasonably incurred in taking the action.
- (6) If the customer does not comply with the notice, the distributor may recover the amount from the customer as a debt.

Part 5 Distribution officers

Division 1A Preliminary

131A References to distributor and processed natural gas in pt 5

In this part—

- (a) a reference to a distributor includes a reference to an LPG distributor; and
- (b) a reference to a distributor's distribution pipeline or system includes a reference to an LPG distributor's LPG pipeline or LPG distribution system; and
- (c) a reference to processed natural gas transported through a distributor's distribution pipeline or system includes, for an LPG distributor's LPG pipeline or LPG distribution system, a reference to LPG transported through the pipeline or system.

Division 1 Appointment and functions

132 Appointment

- (1) A distributor may appoint distribution officers to perform the functions mentioned in section 133.
- (2) However, the distributor may appoint a person under subsection (1) only if the person is appropriately qualified for the appointment and has the necessary expertise or experience.
- (3) Subject to subsection (2), an officer of a retailer may be appointed as a distribution officer.

133 Functions

A distribution officer's functions are to—

- (a) install and maintain the distributor's gas infrastructure; and
- (b) read or test meters connected to the distributor's distribution pipeline or system; and
- (c) ensure the distributor's gas infrastructure is safe; and
- (d) prevent or deal with an emergency involving, or that may involve, processed natural gas transported through the distributor's distribution pipeline or system.

134 Distribution officers are public officials for particular functions

A distribution officer is declared to be a public official for the *Police Powers and Responsibilities Act 2000* if the officer is, or is proposing to, perform a function mentioned in section 133(c) or (d).¹⁹

¹⁹ See the *Police Powers and Responsibilities Act 2000*, chapter 1, part 3, division 2 (Helping public officials).

135 Issue of identity card

- (1) A distributor must issue an identity card to each of its distribution officers.
- (2) The identity card must—
 - (a) contain a recent photo of the person; and
 - (b) contain a copy of the person's signature; and
 - (c) identify the person as a distribution officer for the distributor; and
 - (d) state an expiry date for the card.

136 Production or display of identity card

- (1) In exercising a power under division 2 in relation to another person, a distribution officer must—
 - (a) produce his or her identity card for the person's inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the officer must produce the identity card for the person's inspection at the first reasonable opportunity.

137 Return of identity card

A person who ceases to be a distribution officer must return the person's identity card to the distributor within 20 business days after ceasing to be a distribution officer, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

Division 2 Powers of entry**138 Power to enter—general**

- (1) A distribution officer may enter a place to—

- (a) install, maintain or take away the distributor's gas infrastructure; or
 - (b) read or test a meter connected to the distributor's distribution pipeline or system.
- (2) However, the officer can not under subsection (1)—
- (a) enter a part of the place where a person resides; or
 - (b) enter the place between 5p.m. on any day and 8a.m. on the next day.
- (3) The power under subsection (1) may be exercised without the consent of, or notice to, the occupier of the place.

139 Power to enter to make gas infrastructure safe

- (1) A distribution officer may enter a place to make the distributor's gas infrastructure safe if the occupier of the place has been given at least 48 hours notice of the entry.
- (2) However, the officer can not under subsection (1)—
- (a) enter a part of the place where a person resides; or
 - (b) enter the place between 5p.m. on any day and 8a.m. on the next day.
- (3) The power under subsection (1) may be exercised without the occupier's consent.

140 Power to enter for emergency

- (1) A distribution officer may enter a place to prevent or deal with an emergency involving, or that may involve, processed natural gas transported through the distributor's distribution pipeline.
- (2) The power under subsection (1) may be exercised without the consent of, or notice to, the occupier of the place.
- (3) However, if the occupier is present at the place, before entering the place, the officer must do, or make a reasonable attempt to do, the following things—
- (a) comply with section 136 for the occupier;
 - (b) tell the occupier the purpose of the entry;

- (c) seek the consent of the occupier to the entry;
 - (d) tell the occupier the officer is permitted under this Act to enter the place without the occupier's consent.
- (4) Also, if the occupier is not present at the place, the officer must take reasonable steps to advise the occupier of the officer's intention to enter the place.
- (5) Subsections (3) and (4) do not require the officer to take a step that the officer reasonably believes may frustrate or otherwise hinder the prevention or dealing with the emergency.

141 Power to enter common property unaffected

- (1) The powers under this division are in addition to and do not limit a distribution officer's power, under the *Body Corporate and Community Management Act 1997*, section 263,²⁰ to enter common property.
- (2) However, if the entry is also authorised under this division, section 145 applies to the entry.

Division 3 Safeguards

142 Duty to avoid damage

In performing a function or exercising a power under this part, a distribution officer must take all reasonable steps to ensure the officer causes as little inconvenience, and does as little damage as is practicable.

143 Notice of damage

- (1) This section applies if a distribution officer damages something when performing a function or exercising a power under this part.

²⁰ *Body Corporate and Community Management Act 1997*, section 316 (Powers of entry by local government, utility service provider or other authorised entity)

- (2) However, this section does not apply to damage the officer reasonably considers is trivial or if the officer reasonably believes—
 - (a) there is no-one apparently in possession of the thing; or
 - (b) the thing has been abandoned.
- (3) The officer must promptly give notice of the damage to the person who appears to the officer to be the owner or person in possession of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the officer must—
 - (a) leave the notice at the place where the damage happened; and
 - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The officer may delay complying with subsection (3) or (4) if the officer is exercising a power under section 139 or 140.
- (6) However, the delay may be only for so long as it is reasonably necessary—
 - (a) for section 139—to make the gas infrastructure safe; or
 - (b) for section 140—to prevent or deal with the emergency.

144 Content of notice of damage

- (1) A notice of damage under section 143 must state—
 - (a) particulars of the damage; and
 - (b) that the person who suffered the damage may claim compensation under section 145.
- (2) If the distribution officer believes the damage was caused by a latent defect in the thing or circumstances beyond the officer's control, the officer may state the belief in the notice.

145 Compensation from distributor to owner or occupier

- (1) This section applies if an owner or occupier of land (the *claimant*) suffers a cost, damage or loss because of performance, or purported performance or the exercise, or

purported exercise, of a function or power under this part by a distribution officer.

- (2) Compensation for the cost, damage or loss is payable by the distributor to the claimant.
- (3) The compensation may be claimed and ordered in a proceeding brought in a court of competent jurisdiction.

Chapter 3 Supply of reticulated processed natural gas

Part 1 Retail authorities

Division 1 Applying for and obtaining retail authority

Subdivision 1 Application

148 Who may apply for retail authority

- (1) A person may, in the approved form, apply to the regulator for a retail authority.
- (2) However, a person can not apply for an area retail authority if the retail area for the proposed authority is or includes the retail area of an existing retail authority.
- (3) Also, a distributor can not apply for a retail authority to provide customer retail services relating to processed natural gas to be transported through a pipeline if the distributor provides customer connection services relating to processed natural gas transported through a covered pipeline.²¹

²¹ See also sections 168 (Ring fencing requirement) and 181 (Conditions for amendment, cancellation or suspension).

(4) Also, Ergon Energy or a subsidiary of Ergon Energy can not apply for a retail authority.

(5) In this section—

Ergon Energy means Ergon Energy Corporation Limited ACN 087 646 062.

subsidiary see the *Government Owned Corporations Act 1993*, section 3.

149 Requirements for application

The application must—

- (a) state whether it is for an area or general retail authority; and
- (b) if it is for an area retail authority—describe the area; and
- (c) be accompanied by the fee prescribed under a regulation.

150 Public notice by regulator and submissions

(1) This section does not apply if the applicant holds a corresponding authority for the retail authority.

(2) Before deciding the application, the regulator must—

- (a) publish in a Statewide newspaper a notice stating each of the following—
 - (i) that an application for a retail authority has been made;
 - (ii) the applicant's name;
 - (iii) if the application is for an area retail authority—a description of the area;
 - (iv) a period of at least 20 business days during which anyone may make written submissions to the regulator about the application;
 - (v) where the application, other than any part of the application that is FOI exempt matter, may be inspected; and

- (b) consider written submissions about the application made to the regulator within the stated period.

151 Deciding application

- (1) The regulator must decide whether to grant or refuse the application.
- (2) If the regulator decides to grant the application, the regulator may impose conditions on the retail authority the regulator considers appropriate.²²

152 Criteria for deciding application

- (1) The regulator may decide to grant the application only if satisfied the applicant is a suitable person to hold the retail authority.
- (2) For subsection (1), the regulator may consider any of the following (the *suitability criteria*), to the extent they are relevant to the applicant's competence to hold the retail authority—
 - (a) ability to provide an adequate level of customer retail services;
 - (b) financial capacity;
 - (c) commercial and other dealings and the standard of honesty and integrity shown in the dealings;
 - (d) failure to perform contractual or statutory obligations and the reasons for the failure;
 - (e) criminal history;
 - (f) knowledge of, or experience in, the gas or energy industries;
 - (g) if the applicant is a corporation—the matters mentioned in paragraphs (a) to (f) for persons who are executive officers of, or substantial shareholders in, the corporation.

²² See also division 2 (Retail authority conditions).

- (3) However, the regulator may, without regard to any of the suitability criteria, decide the applicant is a suitable person to hold the retail authority if the applicant holds a corresponding authority.
- (4) In deciding the application, the regulator must consider any relevant government policies about energy issues.

154 Term of authority

- (1) This section applies if the regulator decides to grant the application.
- (2) The regulator may decide to grant the authority for a stated term.
- (3) If no term is decided for a retail authority, it continues in force unless cancelled or surrendered under this part.

Subdivision 2 Steps after deciding application

155 Notice of decision to grant application

- (1) If the regulator decides to grant the application, the regulator must, as soon as practicable, give the applicant notice (*decision notice*) stating each of the following—
 - (a) the decision;
 - (b) the conditions the regulator has decided to impose on the authority;
 - (c) any other matter relevant to the grant of the authority;
 - (d) a period after the giving of the decision notice for the applicant to give the regulator notice (*acceptance notice*) that the applicant agrees to the conditions, or the conditions with changes to which the regulator has agreed;
 - (e) the application will be taken to have lapsed unless the applicant gives an acceptance notice within the period or later period as extended by the regulator.
- (2) The stated period must end at least 20 business days after the applicant is given the decision notice.

- (3) The regulator may, by notice given to the applicant before the stated period ends, extend the period for giving an acceptance notice.

156 Lapsing of application if conditions not accepted

The regulator is taken to have decided to refuse the application if—

- (a) the regulator has given the applicant a decision notice; and
- (b) the applicant has not given the regulator an acceptance notice within the period stated in the notice, or if the regulator has extended the period for giving an acceptance notice, the extended period.

157 Issue and public notice of authority

- (1) This section applies if the applicant gives the regulator an acceptance notice within the period stated in the notice, or if the regulator has extended the period for giving an acceptance notice, the extended period.
- (2) The regulator must, as soon as practicable—
 - (a) issue the applicant the retail authority; and
 - (b) publish a notice about the authority in a Statewide newspaper.²³
- (3) The notice must state—
 - (a) that the applicant has been issued a retail authority; and
 - (b) each of the following about the authority—
 - (i) its type;
 - (ii) if it is an area retail authority—its retail area;
 - (iii) if it has been issued for a term—its term; and
 - (c) the conditions of the authority, or where they may be inspected.

²³ See also chapter 6, part 6 (Registers).

158 Information notice about refusal

If the regulator decides to refuse the application, the regulator must, as soon as practicable, give the applicant an information notice about the decision.

Division 2 Retail authority conditions**159 Operation of div 2**

- (1) This division imposes conditions on each retail authority that apply as well as any conditions stated in the authority.
- (2) If an imposed condition conflicts with a condition stated in the authority, the imposed condition prevails to the extent of the inconsistency.
- (3) As well as imposing a condition, sections 169, 170 and 171 also impose a penalty.

160 Obligation to have standard terms before providing customer retail services

A retailer must ensure the retailer has standard terms in force, under part 2, division 2 before it provides customer retail services.

166 General conditions

A retailer must—

- (a) pay amounts required to be paid under the authority or this Act; and
- (b) in carrying out activities under the authority, comply with this Act, the Petroleum and Gas (Production and Safety) Act and all other relevant laws.

167 General right of retailer

Subject to sections 169 and 171, any retailer may provide customer retail services to a customer, anywhere in the State.

168 Ring fencing requirement

A retailer must not transport processed natural gas through a pipeline if the retailer provides customer retail services relating to processed natural gas transported through a covered pipeline.²⁴

169 Restriction on general retailers

A general retailer must not provide customer retail services to an excluded customer's premises, unless the provision of the services is authorised or required under the retailer of last resort scheme, an insufficiency of supply declaration or an insufficiency of supply direction.

Maximum penalty—500 penalty units.

170 Restriction on providing customer retail services to excluded customer's premises

If a customer is an excluded customer for premises in the retail area for an area retail authority, a retailer must not provide customer retail services to the premises unless—

- (a) the retailer is the area retailer for the authority; or
- (b) the provision of the services is authorised or required under the retailer of last resort scheme, an insufficiency of supply declaration or an insufficiency of supply direction.

Maximum penalty—500 penalty units.

171 Area retailers—restriction for excluded customers

An area retailer must not provide customer retail services to an excluded customer outside the retail area of the retailer's retail authority unless the services are provided under another area retail authority.

Maximum penalty—500 penalty units.

²⁴ See also sections 148 (Who may apply for retail authority) and 181 (Conditions for amendment, cancellation or suspension).

173 Compliance with contingency supply plan requirements

A retailer must comply with chapter 4, part 2.²⁵

174 Participation in retailer of last resort scheme

A retailer must comply with the retailer of last resort scheme to the extent it applies to the retailer.

174A Compliance with industry codes

A retailer must comply with any industry code that applies to the retailer.

174B Membership of energy ombudsman scheme

A retailer must pay any amount that, under the *Energy Ombudsman Act 2006*, it must pay the energy ombudsman.

175 Conditions imposed under a regulation

- (1) A retailer must comply with—
 - (a) any conditions prescribed under a regulation for, or relating to, the provision of customer retail services; or
 - (b) any code, intergovernmental agreement, protocol or other agreement prescribed under a regulation.
- (2) A code or agreement may be prescribed only if it relates to the provision of customer retail services.

175A Additional condition about community services agreement

- (1) A retailer must not provide customer retail services unless—
 - (a) the retailer—
 - (i) enters into an agreement with the State to provide, for at least 5 years, the community services agreed between the State and the retailer; and

25 Chapter 4, part 2 (Contingency supply plans)

- (ii) complies with the agreement; or
- (b) if no agreement is entered into with the State under paragraph (a)(i), the retailer—
 - (i) provides the community services decided by the Minister; and
 - (ii) complies with any conditions included in the Minister's decision about the provision of the services.

Example of a community service—

pensioner rebate scheme for customer retail services

Maximum penalty—400 penalty units.

- (2) In making a decision under subsection (1)(b), the Minister must have regard to the retailer's reasonable administration costs and other risks in providing the community services.

Division 3 Amendment, cancellation and suspension of retail authority

Subdivision 1 Amendment by regulator

176 Amendments for which proposed action notice is not required

The regulator may amend a retail authority at any time by giving the relevant retailer notice of the amendment and recording particulars of the amendment in the register of authorities if the amendment—

- (a) is to correct a clerical or formal error; or
- (b) does not affect the interests of the retailer or anyone else and the retailer has, in writing, agreed to the amendment.

177 Amendments for which proposed action notice is required

The regulator may amend a retail authority if—

- (a) the regulator considers the amendment necessary or desirable; and
- (b) the procedure under subdivision 5 is followed.

178 Imposed condition can not be amended

The regulator can not amend a condition of a retail authority imposed under division 2.

Subdivision 2 Amendment by application

179 Applying for amendment

- (1) A retailer may, in the approved form, apply to the regulator to amend its authority in a stated way, other than to amend a condition imposed under division 2.
- (2) The application must be accompanied by the fee prescribed under a regulation.
- (3) Subsection (1) does not limit section 193(3).²⁶

180 Deciding application

- (1) The regulator must decide to make or refuse to make the amendment.
- (2) If the decision is to make the amendment, the regulator must, as soon as practicable, make the amendment to the retail authority and give the applicant notice of the decision.
- (3) If the decision is to refuse to make the amendment, the regulator must, as soon as practicable, give the applicant an information notice about the decision.

26 Section 193 (Deciding transfer application)

Subdivision 3 Cancellation and suspension

181 Conditions for amendment, cancellation or suspension

- (1) The regulator may cancel or suspend a retail authority if—
 - (a) an event mentioned in subsection (2) has happened; and
 - (b) either—
 - (i) for immediate suspension—the procedure under section 182 is followed; or
 - (ii) for cancellation or suspension other than immediate suspension—the procedure under subdivision 5 is followed.
 - (2) For subsection (1), the event is that the retailer—
 - (a) obtained the authority because of a materially false or misleading declaration or representation, made orally or in writing; or
 - (b) is, or is likely to become, unsuitable to hold, or continue to hold, the authority, including, for example because of a contravention of any of the following by the retailer or, if the retailer is a corporation, any executive officer of, or substantial shareholder in, the corporation—
 - (i) this Act;
 - (ii) the Petroleum and Gas (Production and Safety) Act or another relevant Act;
 - (iii) a direction given under this Act or the Petroleum and Gas (Production and Safety) Act or another relevant Act;
 - (iv) the authority; or
 - (v) an industry code, in a material way; or
- Note—*
- For criteria for deciding a material contravention, see section 270Q.
- (c) has contravened, or is contravening, section 168;²⁷ or

27 Section 168 (Ring fencing requirement)

- (d) has used the authority for a purpose other than for a purpose for which it was issued.
- (3) In deciding whether the retailer is a suitable person to hold, or continue to hold, the authority the regulator must have regard to the suitability criteria.

Subdivision 4 Procedure for immediate suspension

182 Immediate suspension

- (1) The regulator may, by notice (*suspension notice*) to the retailer, immediately suspend a retail authority if the regulator reasonably believes—
 - (a) a ground exists to suspend or cancel the authority; and
 - (b) the circumstances are so extraordinary that it is imperative to immediately suspend the authority to control or prevent—
 - (i) a significant adverse economic or social impact on the State or a part of the State; or
 - (ii) a danger to the public.
- (2) The suspension notice must—
 - (a) state each of the following—
 - (i) that the authority is suspended immediately;
 - (ii) the grounds for the suspension;
 - (iii) the facts and circumstances forming the basis for the grounds;
 - (iv) the suspension period;
 - (v) that the retailer may make written submissions to the regulator to show why the suspension should end; and
 - (b) include, or be accompanied by, an information notice about the decisions to give the notice and to fix the suspension period.

- (3) The suspension period must not be more than 40 business days.
- (4) The suspension has effect immediately after the retailer is given the suspension notice.
- (5) The authority is ineffective during the suspension period.

Subdivision 5 Procedure for amendment, cancellation or suspension other than immediate suspension

183 Application of sdiv 5

This subdivision applies if—

- (a) under section 177, the regulator proposes to amend a retail authority; or
- (b) the regulator proposes to cancel or suspend a retail authority, other than an immediate suspension under section 182.

184 Notice of proposed action

- (1) The regulator must give the retailer a notice stating each of the following—
 - (a) the action (the *proposed action*) the regulator proposes to take under this division;
 - (b) the grounds for the proposed action;
 - (c) the facts and circumstances that are the basis for the grounds;
 - (d) if the proposed action is to amend—the proposed amendment;
 - (e) if the proposed action is to suspend—the proposed suspension period;
 - (f) that the retailer may make, within a stated period, written submissions to show why the proposed action should not be taken.

- (2) The stated period must end at least 20 business days after the notice is given.
- (3) The notice may be given for a retail authority the subject of an immediate suspension.

185 Considering submissions

- (1) The regulator must consider any written submission made under section 184(1)(f) by the retailer within the period stated in the notice.
- (2) If the regulator at any time decides not to take the proposed action, the regulator must, as soon as practicable, give the retailer notice of the decision.

186 Decision on proposed action

If, after complying with section 185, the regulator still believes a ground exists to take the proposed action, the regulator may decide to—

- (a) if the proposed action was to amend—make the amendment; or
- (b) if the proposed action was to suspend for a stated period—suspend for no longer than the proposed suspension period; or
- (c) if the proposed action was to cancel—
 - (i) cancel the retail authority; or
 - (ii) suspend it for a stated period.

187 Notice and taking of effect of proposed action decision

- (1) The regulator must, as soon as practicable after making a decision under section 186, give the retailer an information notice about the decision.
- (2) The decision takes effect on the later of the following—
 - (a) the day the information notice is given;
 - (b) a later day of effect stated in the notice.

- (3) However, if the decision was to amend, cancel or suspend because of a conviction, the amendment, cancellation or suspension—
- (a) does not take effect until—
 - (i) the period to appeal against the conviction ends; and
 - (ii) if an appeal is made against the conviction—the appeal is finally decided or is otherwise ended; and
 - (b) has no effect if the conviction is quashed on appeal.

Division 4 Dealings with retail authority

Subdivision 1 Renewals

188 Applying for renewal

- (1) A retailer may apply to the regulator to renew the retailer's authority for a stated term or to renew it without a term.
- (2) An application under this section—
 - (a) must be made in the approved form and accompanied by the fee prescribed under a regulation; and
 - (b) can not be made if the authority has ended.

189 Deciding renewal application

- (1) The regulator must decide whether to grant or refuse the application.
- (2) Division 1 (other than section 148) applies to the application as if it were an application for the authority.²⁸

28 Division 1 (Applying for and obtaining retail authority)
 Section 148 (Who may apply for retail authority)

190 Continuing effect of authority for renewal application

If the term of the retail authority ends before the application is decided, despite the ending of the term, the authority continues in force until—

- (a) the start of any renewal of the authority; or
- (b) the applicant is given an information notice about a decision to refuse the application; or
- (c) the application is withdrawn; or
- (d) the authority is cancelled under this Act.

Subdivision 2 Transfers**191 Transfer only by application**

- (1) A retail authority may be transferred only under this subdivision.
- (2) A purported transfer of a retail authority not made under this subdivision is of no effect.²⁹

192 Applying for transfer

- (1) A retailer may apply to the regulator to transfer the retailer's retail authority.
- (2) The application must be—
 - (a) in the approved form; and
 - (b) made by the retailer and the proposed transferee; and
 - (c) accompanied by the fee prescribed under a regulation.

193 Deciding transfer application

- (1) The regulator may decide to grant the application only if the regulator is satisfied the proposed transferee is a suitable person to hold the authority.

²⁹ See also section 302 (Additional consequences of unlawfully selling reticulated processed natural gas).

- (2) For subsection (1), the regulator may consider any suitability criteria to the extent it is relevant to the proposed transferee's competence to hold the retail authority.
- (3) The regulator may, in granting the application, impose conditions on the authority.
- (4) If the regulator decides to refuse the application or impose a condition on the authority, the regulator must, as soon as practicable, give the applicants an information notice about the decision.
- (5) Subsection (4) does not apply for a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicants.

Subdivision 3 Mortgages

194 Mortgage of retail authority

A retailer may mortgage the retailer's retail authority without the approval of, or notice to, the regulator.

195 Notice of intention to exercise powers under mortgage

- (1) This section applies if a mortgage has been granted over a retail authority and the retailer has defaulted under the mortgage.
- (2) The mortgagee may exercise its powers under the mortgage only if the mortgagee has given the regulator at least 20 business days notice of the mortgagee's intention to exercise powers under the mortgage that relate to the authority.
- (3) Any purported exercise of a power under the mortgage relating to the authority in contravention of subsection (2) is of no effect.

196 Consequence of exercising powers under mortgage

If a mortgagee under a mortgage over a retail authority exercises any power under the mortgage relating to the

authority, this Act applies to the mortgagee as if the mortgagee were the retailer under the authority.

Subdivision 4 Surrenders

197 Surrenders

- (1) A retailer may surrender its authority only if the regulator has, on the retailer's application, approved the surrender.
- (2) The application must be in the approved form and accompanied by the fee prescribed under a regulation.
- (3) The regulator—
 - (a) may impose conditions on giving the approval; and
 - (b) must fix a time, no later than 6 months after deciding the application, for the surrender to take effect.
- (4) If the regulator decides to refuse the application or impose a condition on the surrender, the regulator must, as soon as practicable, give the applicant an information notice about the decision.
- (5) Subsection (4) does not apply for a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicant.

Part 2 Customer retail services

Division 1 Applying for and obtaining customer retail services by small customer

198 Applying to area retailer for provision of customer retail services

- (1) A small customer who owns or occupies premises may make an application (a *retail services application*) to an area retailer for the provision of customer retail services to the premises.
- (2) However, if the customer is other than an excluded customer, the customer can only make the application for the premises if the premises are MIRN premises.
- (3) Also, if the customer is an excluded customer for the premises, the customer can only make the application to the area retailer in whose retail area the premises are located.
- (4) The application must be made in the way, and give the information reasonably required, by the retailer.
- (5) To remove any doubt, it is declared that this section does not prevent any other customer asking a retailer to provide customer retail services to the premises.

199 Deciding application

An area retailer must decide to grant or refuse a retail services application made to the retailer within 10 business days after the application is made or a longer period agreed between the retailer and the applicant.

200 Information notice for refusal of services to small customer

- (1) This section applies if—
 - (a) a customer makes a retail services application to an area retailer for premises; and

- (b) the retailer decides the area retail obligation does not apply to the services applied for; and
 - (c) had the services been provided, the customer would have been a small customer for the premises.
- (2) The retailer must, as soon as practicable after, but within 1 month of, receiving the application give the customer an information notice about the decision.

201 Area retailer obligation

- (1) If a retail services application to an area retailer is for premises in the retailer's retail area, the retailer must provide to the premises the customer retail services applied for.
- (2) The obligation is the *area retailer obligation*.
- (3) The obligation is subject to sections 202 and 203.

Note—

Generally, in the absence of a negotiated retail contract, a standard retail contract is taken to exist between the entity and the customer. See section 204.

202 Things to which area retailer obligation is subject

The area retailer obligation is subject to each of the following—

- (a) any relevant insufficiency of supply declaration or insufficiency of supply direction;
- (b) the retailer of last resort scheme;
- (c) the conditions of the retailer's relevant retail authority;
- (d) any relevant provision of an industry code about customer transfers or cooling-off periods for the provision of customer retail services.

203 When area retailer obligation does not apply

- (1) The area retailer obligation does not apply to an area retailer in relation to a customer if—
 - (a) the retailer is to arrange for customer connection

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services for the premises and the distributor for the premises is not obliged to provide, or has the right to disconnect, the services; or

- (b) the customer is to arrange for customer connection services for the premises and no connection contract has been entered into with the distributor for the premises; or
 - (c) the retailer has asked the customer for information the retailer reasonably requires to allow the retailer to provide the customer retail services and the customer has not complied with the request within a reasonable period; or
 - (d) the retailer has asked the customer to provide or maintain access, equipment, facilities, space or anything else the retailer reasonably needs to provide the customer retail services and the customer has not complied with the request within a reasonable period; or
 - (e) the customer contravenes this Act, the Petroleum and Gas (Production and Safety) Act or another relevant Act and the contravention relates to safety; or
 - (f) a circumstance beyond the retailer's control prevents the retailer from providing customer retail services to the customer.
- (2) Also, the obligation does not apply if a regulation states the obligation does not apply.
 - (3) The obligation ceases to apply during any period in which the provision of customer connection services to the premises is disconnected under a connection contract or a dangerous situation direction under the Petroleum and Gas (Production and Safety) Act.
 - (4) This section does not prevent the retailer from lawfully providing the customer retail services even though it is not obliged to do so.

Division 2 Standard retail contracts

204 Standard retail contract for particular small customers

- (1) This section applies if—
 - (a) the area retailer obligation applies to a retailer for a small customer's premises; and
 - (b) the premises are connected to a distribution system; and
 - (c) the retailer provides the customer retail services applied for, in accordance with the application; and
 - (d) there is no negotiated retail contract in force between the retailer and the customer in relation to the premises.
- (2) This section also applies if—
 - (a) a small customer's premises are connected to a distribution system without the customer having made a retail services application for the premises; and
 - (b) there is no negotiated retail contract in force between a retailer and the customer in relation to the premises.
- (3) A contract for the provision of the customer retail services to the premises is taken to have been entered into between the customer and—
 - (a) for the circumstances mentioned in subsection (1)—the area retailer; or
 - (b) for the circumstances mentioned in subsection (2)—the retailer that, under an industry code, is the registered retailer for the metering installation for the premises.
- (4) The contract is a *standard retail contract*.
- (5) The terms of the contract are the retailer's standard terms, in force from time to time that apply to the customer.
- (6) The customer and the retailer are taken to have agreed to comply with the terms and to have entered into the contract as a deed.
- (7) This section is subject to the retailer of last resort scheme.

205 Retailer's standard terms for small customers

- (1) Each retailer must, before it provides customer retail services, prepare the terms (its *standard terms*) on which it provides customer retail services under a standard retail contract, including its prices for the services.
- (2) The terms may—
 - (a) be different for stated types of small customers; and
 - (b) be contained in a different document for any of the types; and
 - (c) include a methodology for fixing the prices.
- (3) The retailer may amend its standard terms at any time.
- (4) However, the standard terms or amended standard terms take effect only when the retailer complies with section 206 in relation to the terms or amended terms.
- (5) The standard terms and any amended standard terms—
 - (a) must not be inconsistent with this Act or any relevant industry code; and
 - (b) must comply with all relevant industry code provisions about minimum terms for the provision of customer retail services to small customers; and
 - (c) are unenforceable to the extent they do not comply with paragraphs (a) and (b).
- (6) If, under subsection (5)(b), a term or an amendment is unenforceable because it conflicts with a minimum term provision mentioned in subsection (5)(b), the minimum term is taken to be included in the terms or amended standard terms.
- (7) Subsection (4) does not apply to stop a minimum term from applying under subsection (6).

206 Publication of standard terms

- (1) This section applies only if a retailer prepares or amends its standard terms.
- (2) The retailer must—

- (a) publish the terms or amended terms on its website; and
 - (b) give QCA a copy of the terms or amended terms; and
 - (c) if a small customer asks, give the customer a copy of the terms or amended terms, free of charge.
- (3) Also, subsections (4) and (5) apply if the terms or amended terms increase any price or tariff (the *old price*) currently charged by the retailer for customer retail services.
- (4) The retailer must—
- (a) at least 10 business days before the new prices are to take effect publish a notice (the *price increase notice*) on its website; and
 - (b) give each of its small customers a copy of the price increase notice with, or in, its next bill to the customer for customer retail services when it gives the customer the bill.
- (5) The price increase notice—
- (a) must state the increased price, or a methodology for fixing the increased price, and when the increased price is to start; and
 - (b) may be included with the material published under subsection (2)(a).

207 Ending of standard retail contract

- (1) A standard retail contract between a retailer and a small customer for the customer's premises is taken to end if—
- (a) the retailer and the customer enter into a negotiated retail contract for the premises and that contract comes into effect; or
 - (b) another retailer becomes, under an industry code, the registered retailer for the metering installation for the premises; or
 - (c) the retailer commences the provision of customer retail services under a retail contract to another customer at the premises.

- (2) This section does not limit how or when a standard retail contract may end.

Division 3 Negotiated retail contracts

208 Negotiation of retail contract

- (1) A customer and a retailer may enter into a contract (a *negotiated retail contract*) for the provision of customer retail services from the retailer for premises of the customer on terms that are different to the retailer's standard terms.
- (2) Subsection (1) applies subject to sections 209 and 210.

209 General limit on what may be negotiated

A negotiated retail contract must not be inconsistent with this Act or any relevant industry code, and is unenforceable to the extent that it is.

210 Provisions for small customers

- (1) This section applies to a negotiated retail contract for the provision of customer retail services to a small customer's premises.
- (2) The contract must comply with all relevant industry code provisions about minimum terms for the provision of customer retail services to small customers.
- (3) The contract is unenforceable to the extent it does not comply with subsection (2).
- (4) If, under subsection (3), a term of the contract is unenforceable because it conflicts with a minimum term provision mentioned in subsection (2), the minimum term is taken to be a term of the contract.

Part 3 On-supply³⁰

Division 1 Preliminary

213 ***On-suppliers and their receivers***

- (1) An ***on-supplier*** is a person who—
 - (a) is the owner or occupier of premises or has the right to use premises; and
Example—

an owner, occupier or a person who has a right to use a caravan park, exhibition centre, hostel, hotel, industrial park, lodging house, marina, market arcade, motel or shopping centre
 - (b) supplies, by reticulation, processed natural gas for use in the premises.
- (2) An ***on-supplier*** also includes a body corporate or body corporate manager under a body corporate Act who supplies, or authorises someone else to supply, by reticulation, processed natural gas to—
 - (a) members of the body corporate or;
 - (b) persons who occupy the premises that make up the body corporate.
- (3) The premises for which a person is an on-supplier is called the ***on-supplier's premises***.
- (4) A ***receiver*** is a person who owns, occupies or has the right to use an on-supplier's premises and to whom the on-supplier supplies processed natural gas, by reticulation.

214 ***Common areas and common area consumption***

- (1) A ***common area***, of an on-supplier's premises, means a part of the premises that the on-supplier and each lessee or other

30 For the consequence of failure to comply with this part, see section 288 (Unlawfully selling reticulated processed natural gas).

person the on-supplier has given a right to use the premises have agreed is a common area of the premises.

Examples of a part of an on-supplier's premises that may be a common area—

- community, entertainment, information and leisure facilities in a caravan park
- malls and walkway
- parking areas
- rest rooms and toilets

- (2) ***Common area consumption***, for an on-supplier's premises, is the whole or part of the processed natural gas consumed in a common area of the on-supplier's premises.

215 Accounting periods

- (1) An ***accounting period***, for an on-supply agreement, is a period of 1 year beginning on a day fixed by the on-supplier.
- (2) The ***first accounting period***, for an on-supply agreement, is the accounting period in which the agreement is made, or proposed to be made.

Division 2 On-supply agreements

217 On-supply agreements

- (1) An on-supplier and a receiver may agree about how—
- (a) the on-supplier is to supply processed natural gas to the receiver; or
 - (b) the on-supplier may charge the receiver for common area consumption for the on-supplier's premises.
- (2) The agreement may provide for a stated charge or for no charge for the supply or common area consumption.³¹
- (3) The agreement may be—

³¹ See however sections 231 (Requirement to comply with notified prices) and 232 (Additional consequences of failure to comply with notified prices).

- (a) written or oral; or
 - (b) made in any way permitted by law; or
 - (c) incorporated in a lease or other agreement between the on-supplier and the receiver.
- (4) An agreement made under this section is called an *on-supply agreement*.

Division 3 Preliminary disclosure requirements about common area charges

218 Application of div 3

This division applies if—

- (a) a person (the *prospective on-supplier*) proposes to enter into an on-supply agreement as an on-supplier; and
- (b) under the agreement, the on-supplier will charge someone else (the *prospective receiver*) for common area consumption for the on-supplier's premises.

219 Preliminary consumption estimate

- (1) The prospective on-supplier must, within a reasonable period before making the on-supply agreement, give the prospective receiver—
 - (a) notice of the accounting period that is to apply to the on-supply agreement; and
 - (b) an estimate of the common area consumption for the first accounting period for the agreement.
- (2) In deciding what is reasonable for subsection (1), regard must be had to whether the period was enough to allow the prospective receiver to estimate his or her liability for the common area consumption for the first accounting period for the agreement.

220 Required contents for on-supply agreement

- (1) The prospective on-supplier must not enter into the on-supply agreement unless it provides for—
 - (a) how the common area consumption is to be worked out; and
 - (b) if the receiver is only required to pay part of the common area consumption—how that part is to be worked out.
- (2) Subject to section 221, a failure to comply with subsection (1) does not invalidate or otherwise affect the agreement.

221 Additional consequences of not complying with div 3

- (1) This section does not limit section 288.³²
- (2) This section applies if the prospective on-supplier—
 - (a) does not comply with section 219(1) before entering into the on-supply agreement; or
 - (b) enters into an on-supply agreement in contravention of section 220.
- (3) The receiver under the agreement, may by notice to the on-supplier, terminate any liability that the receiver would, other than for this section, have had for common area consumption to which the agreement applies.
- (4) However, the notice may be given only within 2 months after the agreement is made.
- (5) A termination under this section ends any liability for common area consumption accrued or incurred under the agreement or otherwise at any time before or after the termination.
- (6) To remove any doubt, it is declared that a termination under this section does not, of itself, affect any other liability of the receiver to the on-supplier under the agreement or another agreement.

32 Section 288 (Unlawfully selling reticulated processed natural gas)

Division 4 Individual metering

222 Individual metering option

- (1) This section applies if an on-supply agreement for the supply of processed natural gas from an on-supplier to a receiver is in force.
- (2) The receiver may, at any time—
 - (a) elect, by notice to the on-supplier, to be charged on the basis of the receiver's consumption of processed natural gas supplied from the on-supplier, as measured by a meter; and
 - (b) install the meter, at the receiver's expense.
- (3) However, the election has effect only if the installation—
 - (a) complies with the Petroleum and Gas (Production and Safety) Act and any other relevant Act; and
 - (b) is done in a way—
 - (i) that complies with any reasonable written directions the on-supplier gives the receiver within 5 business days after the giving of the notice; or
 - (ii) if no written directions are given within the 5 business days—that is reasonable.
- (4) In deciding what is reasonable for subsection (3), regard must be had to the interests of the on-supplier and anyone who is an occupier of the on-supplier's premises.

223 Compensation for installation damage

- (1) This section applies if—
 - (a) a receiver has, under section 222, given an on-supplier a notice of election; and
 - (b) the receiver installs a meter for processed natural gas supplied from the on-supplier to the receiver; and
 - (c) either—
 - (i) no written direction was given by the on-supplier under section 222(3)(b); or

- (ii) the installation was done in a way that does not comply with the on-supplier's reasonable written directions under that section; or
 - (iii) the installation was not done in a way that is reasonable; and
- (d) a person as follows (the *claimant*) suffers damage to property because of the installation—
 - (i) the on-supplier;
 - (ii) anyone who is an occupier of the on-supplier's premises.
- (2) Compensation for the damage is payable by the receiver to the claimant.
- (3) The compensation may be claimed and recovered in a proceeding brought in a court of competent jurisdiction.
- (4) In making the order the court must have regard to—
 - (a) whether it was reasonable for the claimant to give the receiver an opportunity to fix the damage; and
 - (b) if paragraph (a) applies—whether the receiver was given a reasonable period to fix the damage.

Division 5 Disclosure requirements for common area consumption charges

224 Application of div 5

This division applies if, under an on-supply agreement, the on-supplier may charge a receiver for common area consumption.

225 Periodic consumption estimates

- (1) The on-supplier must, for each accounting period after the first accounting period for the agreement, give the receiver an estimate of the common area consumption for the on-supplier's premises during the accounting period.

- (2) An estimate for an accounting period must be given at least 1 month before the accounting period begins.

226 Audited statements for each accounting period

- (1) The on-supplier must, for each accounting period give the receiver audited statements of the common area consumption.
- (2) A statement for an accounting period must—
 - (a) comply with section 227; and
 - (b) be given within 3 months after the accounting period ends.

227 Content requirements for audited statement

Each audited statement under section 226 must—

- (a) comply with the standards in the statements of accounting and auditing standards made by CPA Australia and The Institute of Chartered Accountants in Australia; and
- (b) be prepared by a person (the *auditor*) who is—
 - (i) registered, or taken to be registered, as an auditor under the Corporations Act; or
 - (ii) a member of, and holds a practising certificate from, CPA Australia, The Institute of Chartered Accountants in Australia or the National Institute of Accountants; and
- (c) contain the auditor's opinion about whether the statement presents fairly the on-supplier's charges for the common area consumption during the period to which it relates, in accordance with the on-supplier's financial records; and
- (d) compare each relevant estimate given under this part with the amount actually spent by the on-supplier on the common area consumption during the period; and
- (e) compare the total amount actually spent by the on-supplier on common area consumption during the

period with the amount actually paid for the period by anyone for the on-supplier's premises.

Part 4 Pricing

Division 1 QCA investigation

227A Direction by Minister to investigate effectiveness of retail competition

- (1) The Minister may, by gazette notice, give QCA a written direction to—
 - (a) investigate (the *pricing investigation*) the effectiveness of retail competition in the Queensland retail gas market; and
 - (b) give the Minister a report on the pricing investigation within a stated period.
- (2) QCA must comply with the direction.
- (3) QCA must publish the direction on its website.

227B Period for giving report

QCA must give the Minister the report within—

- (a) the period stated in the direction; or
- (b) if no period is stated in the direction—6 months after it receives the direction.

227C Terms of reference

The direction may do all or any of the following—

- (a) state the terms of reference of the pricing investigation;
- (b) require QCA to, during the pricing investigation, make a draft report publicly available or available to a stated entity;

- (c) require QCA to, in conducting the pricing investigation—
 - (i) consider stated matters; and
 - (ii) have stated objectives;
- (d) give QCA other directions the Minister considers appropriate.

227D Notice of pricing investigation or amended term of reference or direction

QCA must publish a notice of the following on its website and in a Statewide newspaper—

- (a) the pricing investigation;
- (b) if a term of reference or direction relating to the pricing investigation is amended—the amended term of reference or direction.

227E Conduct of pricing investigation

- (1) The QCA Act, part 6, other than section 171, (the *applied part*) applies for the pricing investigation—
 - (a) as if a reference in the applied part to an investigation were a reference to the pricing investigation; and
 - (b) as if the QCA Act, section 176(3), required the notice mentioned in that subsection to be given to any entity that QCA knows would be potentially affected by the review.
- (2) However, the applied part applies subject to any requirement or direction of the Minister.

227F Required consultation for report

Before QCA gives the Minister the report it must prepare a draft of the report and engage in the consultation prescribed under a regulation.

Division 2 Notified prices

228 Fixing of prices for standard contracts or for on-supply

- (1) Subject to section 228A, the Minister may fix prices, or a methodology to fix the prices, for—
 - (a) the provision, under a standard retail contract, of services that are, or relate to, customer retail services; or
 - (b) the supply of processed natural gas by on-suppliers to receivers.

Examples of matters for which prices or a methodology may be fixed—

- charges for selling processed natural gas
 - security for the provision of customer retail services
 - charges or fees for late or dishonoured payments
 - charges or fees for discontinuing or recommencing customer connection or retail services
- (2) In exercising the power, the Minister must consider the main purposes of this Act and the QCA code objective.
 - (3) The prices, or prices fixed under the methodology, are called ***notified prices***.
 - (4) The notified prices, or methodology to fix the prices—
 - (a) must be notified by gazette notice; and
 - (b) take effect on the later of the following days—
 - (i) the day the notice is gazetted;
 - (ii) if the gazette notice states a later day of effect—the later day.

Note—

Under section 320, the Minister may delegate the Minister's powers under this division to QCA.

228A Restrictions on the first exercise of price fixing power

- (1) This section applies only for the first occasion on which the Minister exercises the power under section 228.
- (2) The power may be exercised only if—

- (a) either—
 - (i) QCA has given the Minister a report about a pricing investigation; or
 - (ii) AEMC has, under the AEMC Act, a report about the effectiveness of retail competition in the Queensland retail gas market; and
 - (b) no more than 6 months has passed since the giving of the report; and
 - (c) the Minister has considered the report.
- (3) The Minister must—
- (a) publish on the department’s website reasons for exercising the power; and
 - (b) give each area retailer a copy of the reasons.

- (4) In this section—

AEMC means the Australian Energy Market Commission established under section 5 of the AEMC Act.

AEMC Act means the *Australian Energy Market Commission Establishment Act 2004 (SA)*.

229 Review of notified prices

- (1) A retailer or on-supplier to whom notified prices apply may ask the Minister to review the notified prices.
- (2) The Minister must complete the review within 6 months after the request was made.

230 Public advertisement of notified prices

- (1) This section applies if there is a change to notified prices that apply to a particular retailer.
- (2) QCA may publish a notice giving particulars of the changed prices in a newspaper circulating in each locality in which small customers to whom the prices apply reside.
- (3) If QCA asks, the retailer must pay QCA’s reasonable costs of the publication.

231 Requirement to comply with notified prices

- (1) If—
- (a) there is a notified price for the provision of services that are, or relate to, customer retail services; and
 - (b) the notified price applies to a retailer;
- the retailer must comply with the notified price unless otherwise required under the retailer of last resort scheme.
- Maximum penalty—500 penalty units.
- (2) If—
- (a) there is a notified price for the supply of processed natural gas by on-suppliers to receivers; and
 - (b) the notified price applies to an on-supplier;
- the on-supplier must comply with the notified price unless otherwise required under the retailer of last resort scheme.
- Maximum penalty—500 penalty units.

232 Additional consequences of failure to comply with notified prices

- (1) This section applies if—
- (a) a retailer or on-supplier contravenes a notified price for a matter; and
 - (b) the contravention was not caused by a compliance with the retailer of last resort scheme.
- (2) The retailer or on-supplier has no right to recover from the relevant customer or receiver any amount for the matter that is more than the notified price.
- (3) The customer or receiver may recover from the retailer or on-supplier as a debt any amount paid for the matter that is more than the notified price.
- (4) The failure to comply with the notified price does not, of itself, affect the customer's or receiver's liability to the retailer or on-supplier to pay an amount for the matter that is no more than the notified price.

- (5) This section applies despite any retail contract or on-supply agreement.

233 Directions for prices notification

- (1) The Minister may, by notice, give a retailer or on-supplier a direction to do any of the following if the Minister reasonably believes the direction may help the Minister to fix notified prices—
- (a) give the Minister stated information at stated reasonable times or intervals;
 - (b) keep stated records;
 - (c) give the Minister copies of the records at stated times or intervals.³³

Examples of stated information—

- how many customers the retailer has in stated consumption ranges
- the total processed natural gas supplied to the retailer's customers
- how much processed natural gas the retailer supplied its customers in stated consumption ranges
- the cost of processed natural gas at the point, commonly called the 'city gate', where a distributor's distribution system connects with a transmission pipeline
- the fees and charges paid to the retailer for customer retail services
- the retailer's gas transportation costs
- the cost to the retailer of processed natural gas
- the retailer's margin for processed natural gas supplied
- the total cost to the retailer's customers of processed natural gas supplied
- the retailer's total revenue from customer retail services
- a profile of the number of the retailer's customers in stated consumption ranges
- other information relating to the retailer's cost and revenue bases for processed natural gas supply

33 See also section 318 (Confidentiality of particular information).

- (2) The direction must be accompanied by, or include, an information notice about the decision to give the direction.

234 Requirement to comply with direction for prices notification

If a retailer or on-supplier is given a direction under section 233, the retailer must comply with the direction unless the retailer has a reasonable excuse.

Maximum penalty—500 penalty units.

Chapter 4 Sufficiency of supply

Part 1 Preliminary

236 Who is an *industry participant*

Each of the following is an *industry participant*—

- (a) a distributor;
- (b) a retailer;
- (c) the holder of a transmission pipeline licence;
- (d) a person who—
 - (i) holds—
 - (A) a lease under the *Petroleum Act 1923*; or
 - (B) a petroleum lease or petroleum facility licence under the *Petroleum and Gas (Production and Safety) Act*; and
 - (ii) conducts a business in relation to the lease or licence that significantly affects, or may significantly affect, the supply of processed natural gas to the community or part of the community;

- (e) a person who ships gas to a retail market under an agreement with a person who is an industry participant under paragraph (a), (b), (c) or (d);
- (f) a customer who, in the last 12 months, consumed more than 100TJ of processed natural gas;
- (g) a customer who, in the next 12 months, is likely to consume more than 100TJ of processed natural gas.

Part 2 **Contingency supply plans**

237 **Regulator's power to require plan**

- (1) The regulator may, by notice, require an industry participant to, within a stated reasonable period, make a plan that complies with section 239 for the contingency supply of processed natural gas (a *contingency supply plan*).
- (2) The industry participant must comply with the notice.
Maximum penalty—500 penalty units.
- (3) For subsection (1), the plan is not made until the regulator is given a copy.
- (4) Before the industry participant makes the plan, the participant must make reasonable endeavours in the circumstances to consult with the regulator and stakeholders in the processed natural gas industry about the proposed plan.
- (5) However, subsection (4) does not apply if the industry participant has made a plan under another Act and the plan complies or substantially complies with section 239.
- (6) A failure to comply with subsection (4) does not invalidate or otherwise affect the plan.

238 **Regulator's power to make plan**

- (1) If, in contravention of section 237, an industry participant does not make a contingency supply plan, the regulator may, by notice to the participant, make the plan for the participant.

- (2) However, before making the plan, the regulator must give the industry participant—
 - (a) a proposed plan; and
 - (b) a reasonable opportunity to make submissions to the regulator about the proposed plan.
- (3) This section does not prevent the industry participant from making another contingency supply plan or amending the plan made by the regulator if the other plan or amended plan complies with the content requirements.

239 Contingency supply plan—content requirements

- (1) This section imposes requirements (the *content requirements*) for an industry participant's contingency supply plan.
- (2) Despite the content requirements, a matter must not be provided for in the plan to the extent it conflicts with—
 - (a) a safety-related provision made under the Petroleum and Gas (Production and Safety) Act or another Act; or
 - (b) a contingency supply plan made for the State by the regulator.
- (3) The plan must—
 - (a) identify the contingencies or events that may lead to an interruption or curtailment of processed natural gas supply in relation to the industry participant; and
 - (b) provide for the following if any of the contingencies or events happen—
 - (i) alternative arrangements for processed natural gas supply;
 - (ii) a list stating the priority for supply to customers, or types of customer;
 - (iii) how essential services are to be supplied; and
 - (c) give information on the types of customer each contingency or event is likely to affect; and
 - (d) contact details for the industry participant; and

- (e) another matter prescribed under a regulation.
- (4) The alternative arrangements must, as far as reasonably practicable, ensure supply to customers is maximised if any of the contingencies or events happen.

240 Requirement to comply with plan

If a contingency or event identified in an industry participant's contingency supply plan happens, the industry participant must comply with the plan, unless the industry participant has a reasonable excuse.

Maximum penalty—500 penalty units.

241 Limitation of industry participant's liability because of compliance with plan

- (1) This section applies if—
 - (a) a person incurs a cost, damage or loss because of an act done or omission made by an industry participant; and
 - (b) doing the act or making the omission was required by the industry participant's contingency supply plan.
- (2) The industry participant is not civilly liable for the cost, damage or loss if—
 - (a) in doing the act or making the omission the industry participant complied with this Act and the conditions of any relevant distribution or retail authority; and
 - (b) the doing of the act or the making of the omission was carried out in good faith and without negligence.
- (3) Subsection (2)—
 - (a) is subject to any agreement between the person and the industry participant; and
 - (b) does not limit section 6(3).³⁴

34 Section 6 (Act does not affect other rights or remedies)

242 When plan must be revised

- (1) This section applies if—
 - (a) a circumstance happens that affects, or may affect, an industry participant's contingency supply plan complying with the content requirements; and
 - (b) the industry participant becomes aware, or ought reasonably to have become aware, of the happening of the circumstance.
- (2) The industry participant must, as soon as practicable, amend or re-make the plan so that it complies with the content requirements.

Maximum penalty—500 penalty units.
- (3) For subsection (2), the plan is not amended or re-made until the regulator is given a copy.

243 Regulator's power to amend plan

- (1) If the regulator reasonably believes an industry participant's contingency supply plan does not comply with the content requirements, the regulator may, by complying with subsections (3) and (4), amend the plan so that it does comply with the requirements.
- (2) The regulator must give the industry participant a notice stating each of the following—
 - (a) how the plan does not comply with the requirements;
 - (b) that the regulator proposes to amend the plan so that it does comply;
 - (c) the proposed amendment;
 - (d) that the industry participant may within a stated reasonable period—
 - (i) amend the plan so that it does comply with the requirements; or
 - (ii) make written submissions to the regulator about why the proposed amendment should not be made.

- (3) The regulator must consider any written submissions or amendments made by the industry participant within the stated period.
- (4) The amendment does not take effect until the industry participant is given an information notice about the decision to make the amendment.
- (5) This section does not prevent the industry participant from further amending the plan if the further amended plan complies with the content requirements.
- (6) In this section—
amend includes re-make and replace.

Part 3 Information requirements

244 Notice of significant disruption

If an industry participant becomes aware of any significant disruption, or event likely to result in a significant disruption, to the supply of processed natural gas, the participant must, as soon as practicable, give the regulator notice of the disruption or event.

Maximum penalty—100 penalty units.

245 Regulator's power to require information from industry participant

- (1) This section applies if the regulator reasonably believes an industry participant has information that will help the regulator assess the current or probable future sufficiency of supply of processed natural gas.

Examples of information—

- processed natural gas production and estimated future production, by location
- processed natural gas purchases, by location
- processed natural gas supplied and future contractual obligations to supply, by location

- the number of customers in each stated class of customer
 - transportation prices
 - processed natural gas prices for a stated class of customer
 - estimated reserves of coal seam gas and natural gas
- (2) The regulator may, by notice, require the industry participant to give the regulator in the approved form stated information of a type mentioned in subsection (1), at stated reasonable times or intervals.
- (3) The direction must be accompanied by, or include, an information notice about the decision to give the direction.³⁵

246 Failure to comply with information requirement

- (1) An industry participant of whom a requirement under section 245 has been made must comply with the requirement unless the participant has a reasonable excuse.

Maximum penalty—500 penalty units.

- (2) It is a reasonable excuse not to give the information if giving it might tend to incriminate the industry participant.

247 Notice of intention to stop processed natural gas transport or customer connection or retail services

- (1) The holder of a transmission pipeline licence for a pipeline that transports processed natural gas must give the regulator the required notice at least 3 months before stopping, or significantly reducing, the transportation of processed natural gas through the pipeline.

Maximum penalty—100 penalty units.

- (2) An area distributor must give the regulator the required notice at least 6 months before stopping, or significantly reducing, the provision of customer connection services.

Maximum penalty—100 penalty units.

³⁵ See also section 318 (Confidentiality of particular information).

- (3) A retailer must give the regulator the required notice at least 6 months before stopping, or significantly reducing, the provision of customer retail services.

Maximum penalty—100 penalty units.

- (4) Subsections (1) to (3)—
- (a) do not apply for a distributor or retailer if the stoppage or reduction is because of a discontinuance under a connection contract or retail contract; and
 - (b) do not apply if there is a reasonable excuse for the stopping or significant reduction.

- (5) In this section—

required notice means a notice stating each of the following—

- (a) whether the notice is a notice of a stoppage or of a significant reduction;
- (b) reasons for the stoppage or reduction;
- (c) each type of customer (***affected customers***) who will, or are likely to be, affected by the stoppage or reduction;
- (d) details of any arrangements that have been, or will be, put in place to ensure affected customers continue to be supplied with processed natural gas;
- (e) information to be provided to affected customers about the stoppage or reduction and the arrangements;
- (f) details of any level of help to be offered to affected customers.

Part 4 Retailer of last resort scheme

248 Regulation may provide for scheme

A regulation may provide for—

- (a) the establishment of a scheme to be called the ‘retailer of last resort scheme’; and

- (b) the compulsory participation in the scheme by the GRMO and by industry participants whose activities affect the sale of reticulated processed natural gas.

249 Primary objects of scheme

The primary objects of the retailer of last resort scheme are to—

- (a) manage the effects of a retailer being unable to sell reticulated processed natural gas to its customers (a *defaulting retailer*); and
- (b) protect customers of a defaulting retailer from interruption in the sale to them of reticulated processed natural gas.

250 Matters that may be provided for under scheme

Without limiting section 249, the retailer of last resort scheme may provide for any of the following—

- (a) other objects of the scheme;
- (b) circumstances in which it applies;
- (c) industry participants to which it applies;
- (d) customers, or types of customer, to benefit from the scheme;
- (e) a default retail contract;
- (f) the effects of the scheme applying to a defaulting retailer and its affected customers, including, for example, the following—
 - (i) a charter for the scheme, including, for example, its duration and other matters concerning its administration;
 - (ii) ending the defaulting retailer's retail contracts with its affected customers;
 - (iii) ending the defaulting retailer's connection contract for its affected customers' premises;

- (iv) a default retail contract taken to have been entered into between each of the affected customers and the retailer of last resort;
 - (v) a default connection contract taken to be entered into between the retailer of last resort and a distributor for the premises of each affected customer;
- (g) the imposition of requirements on distributors to ensure the sale of reticulated processed natural gas to the defaulting retailer's customers is not interrupted;
- (h) QCA's functions and powers under the scheme, including, for example, any of the following—
 - (i) establishing the charter for a particular defaulting retailer and its affected customers;
 - (ii) applying the scheme to a particular defaulting retailer and to particular customers or class of customers;
 - (iii) appointing a retailer to be the retailer of last resort;
 - (iv) procedures to be followed in making the appointment;
 - (v) supervising and giving directions to the retailer of last resort about the administration of the scheme;
- (i) the imposition of conditions on relevant retailers to give effect to the scheme;
- (j) fees for customer retail services or other services provided under the scheme.

- (4) A failure to comply with subsection (3) does not invalidate or otherwise affect the declaration.

253 Duration of declaration

- (1) If an insufficiency of supply declaration was not made by gazette notice, it expires on the third day after its making.
- (2) If an insufficiency of supply declaration is not tabled in the Legislative Assembly before the end of the next sitting day after its making, it expires at the end of that day.
- (3) Otherwise, an insufficiency of supply declaration continues in force until—
- (a) any time provided in the declaration for its expiry; or
 - (b) it is repealed.

Division 2 Insufficiency of supply directions

254 Minister's power to give directions while declaration in force

- (1) The Minister may give a person as follows a direction (*an insufficiency of supply direction*) to do or not do something to ensure the safe supply of processed natural gas to customers in the area the subject of an insufficiency of supply declaration—
- (a) an industry participant;
 - (b) a stated customer, or type of customer;
 - (c) the GRMO.
- (2) However, before making the direction, the Minister must, if it is practicable to do so, give the person a reasonable opportunity to make submissions about the proposed direction.
- (3) A failure to comply with subsection (2) does not invalidate or otherwise affect the direction.
- (4) Subsection (1)(a) applies even if the person or the relevant business of the person is not in the area.

- (5) The direction may be given in any way the Minister considers appropriate including, for example, by—
- (a) publishing a notice in a newspaper; or
 - (b) television transmission or radio broadcast.

Examples of possible insufficiency of supply directions—

- 1 a direction to control, direct, restrict, or prohibit the production, distribution, supply, or the consumption or use of, processed natural gas
- 2 a direction to a person who extracts, produces, transports or distributes processed natural gas to extract, produce or transport it for supply, or to extract produce, transport or distribute it in a stated way
- 3 a direction to comply with stated conditions for the extraction, production, distribution, supply or consumption or use of processed natural gas
- 4 a direction to carry out stated work to ensure the production, distribution or transportation or supply of processed natural gas
- 5 a direction to make available stated gas infrastructure
- 6 a direction not to operate or use stated gas infrastructure, or to use it only with the Minister's consent
- 7 a direction fixing prices for processed natural gas
- 8 directing an occupier of land to allow a stated person authorised by the Minister, to enter the land to carry out a stated activity to ensure the safe supply of processed natural gas in the area
- 9 a direction to comply with a contingency supply plan made for the State by the regulator

255 Failure to comply with direction

- (1) A person to whom an insufficiency of supply direction has been given must comply with the direction unless the person has a reasonable excuse.

Maximum penalty—500 penalty units.

- (2) It is a reasonable excuse to not comply with the direction if compliance would reasonably, or is reasonably likely to, result in a risk to—
- (a) the safety of any one; or

- (b) the operation or security of a pipeline or other plant or equipment.

256 Liability of recipient for processed natural gas supplied under direction

- (1) This section applies if—
 - (a) under an insufficiency of supply direction a person (the *supplier*) supplies someone else (the *recipient*) with processed natural gas; and
 - (b) the recipient consumes the processed natural gas; and
 - (c) the supplier was not, other than for the direction, legally obliged to supply the processed natural gas to the recipient.
- (2) The recipient must, unless the Minister otherwise approves, pay the supplier a reasonable amount for the processed natural gas.
- (3) In working out what is a reasonable amount for the processed natural gas, regard must be had to—
 - (a) the cost to the supplier of producing or transporting the gas; and
 - (b) any lost revenue to the supplier as a result of the gas being redirected.

257 Direction overrides contracts

If there is an inconsistency between an insufficiency of supply direction and a contract as follows, the direction prevails to the extent of the inconsistency—

- (a) a connection contract;
- (b) a retail contract;
- (c) another contract relating to the production, transport or sale of processed natural gas.

257AA Exemption from Petroleum and Gas (Production and Safety) Act, ss 800, 802 and 803 for person complying with direction

- (1) This section applies to a person to whom an insufficiency of supply direction has been given.
- (2) The Petroleum and Gas (Production and Safety) Act, sections 800, 802 and 803³⁷ do not apply for a relevant activity carried out by the person if the carrying out of the activity was required under the direction.
- (3) In this section—

relevant activity means—

- (a) a petroleum tenure activity as defined under the Petroleum and Gas (Production and Safety) Act, section 800; or
- (b) the construction or operation of any of the following, as defined under the Petroleum and Gas (Production and Safety) Act—
 - (i) a pipeline, other than a distribution pipeline;
 - (ii) a petroleum facility.

Chapter 4A Gas retail market operator

Part 1 General provisions about operator

257A Appointment

- (1) The Minister may, by gazette notice, appoint a body corporate to be the gas retail market operator (the *GRMO*).

³⁷ Petroleum and Gas (Production and Safety) Act, sections 800 (Restriction on petroleum tenure activities), 802 (Restriction on pipeline construction or operation) and 803 (Restriction on petroleum facility construction or operation)

- (2) However—
- (a) the Minister can not appoint an industry participant as the GRMO; and
 - (b) the Minister may appoint a body corporate as the GRMO only if the Minister is satisfied the body has agents, employees or officers who are appropriately qualified to help it perform the GRMO's functions.

257B Functions

- (1) The GRMO's functions are to—
- (a) provide services (*gas retail market services*) to others as the operator of the gas retail market, in accordance with industry codes; and
 - (b) administer the parts of any industry code that provide for the following matters—
 - (i) MIRN registration;
 - (ii) customer transfers;
 - (iii) information exchanges;
 - (iv) metering;
 - (v) gas balancing;
 - (vi) business to business transactions and information exchanges under industry codes;
 - (vii) any other matter prescribed under a regulation; and
 - (c) on request, give QCA advice about issues relating to reticulated processed natural gas markets; and
 - (d) recommend to QCA changes to the provisions of an industry code that provide for any of the matters mentioned in paragraph (b); and
 - (e) perform other functions relating to industry codes delegated to it under section 321A.
- (2) In performing its functions, the GRMO must consider, but is not bound to accept, any advice given to it by any industry advisory committee established under part 2.

257C Obligations

- (1) The GRMO must do the following in performing its functions—
 - (a) comply with this Act and any relevant industry codes;
 - (b) act consistently with the functions;
 - (c) keep accounting records and prepare accounts according to any principles decided by QCA;
 - (d) treat distributors and retailers on a fair and equal basis;
 - (e) give distributors and retailers access to its information systems to the extent necessary to allow them to participate in the reticulated processed natural gas market;
 - (f) comply with any minimum service standards provided for under a regulation or an industry code.
- (2) The GRMO must give any industry advisory committee established under part 2 necessary support to allow the committee to perform its functions.

Part 2 Industry advisory committee**257D Establishment**

The Minister may—

- (a) establish 1 or more advisory committees to support the GRMO; and
- (b) fix the terms of reference of the advisory committees.

257E Functions

An advisory committee's functions are to—

- (a) advise the GRMO on the administration and operation of reticulated processed natural gas markets; and

- (b) make suggestions to the GRMO about changes under section 257B(1)(d); and
- (c) perform other functions prescribed under a regulation.

257F Composition

- (1) An advisory committee consists of—
 - (a) a chairperson decided by the GRMO; and
 - (b) other members decided by distributors and retailers.
- (2) The number of members decided by distributors and the number of members decided by retailers must be the same.
- (3) Of the members decided by retailers, at least 1 must be an individual nominated by area retailers and at least 1 must be an individual nominated by general retailers.

Part 3 Miscellaneous provision**257G Restriction on providing gas retail market services**

A person other than the following must not provide gas retail market services to someone else—

- (a) the GRMO;
- (b) a director or other officer of the GRMO acting within the scope of the person's directorship or other office with the GRMO;
- (c) an employee of the GRMO acting within the course of the employee's employment with the GRMO.

Maximum penalty—500 penalty units.

Chapter 5 Resolution of gas infrastructure work disputes

258 Application of ch 5

This chapter applies to a dispute about gas infrastructure work or proposed gas infrastructure work between a distributor and a public entity or an LPG distributor and a public entity.

267 Referral to regulator to mediate

Either party to the dispute may refer it to the regulator to mediate.

268 Regulator's powers

- (1) The regulator may—
 - (a) give instructions about procedures to be followed by the parties to the dispute to attempt to resolve it before the regulator mediates it; or
 - (b) engage someone else, other than a court, to help mediate the dispute; or
 - (c) decide not to mediate the dispute and refer it to the Governor in Council to decide.
- (2) Also, the regulator may, by notice, require the distributor, LPG distributor or public entity (the *party*) to give the regulator stated information the regulator reasonably requires to mediate the dispute.
- (3) The notice must be accompanied by, or include, an information notice about the decision to make the requirement.
- (4) The information must be given within a reasonable period after the regulator gives the notice, unless the party has a reasonable excuse.

Maximum penalty—500 penalty units.

- (5) It is a reasonable excuse not to give the information if giving it might tend to incriminate the party.

269 Resolution by Governor in Council

- (1) This section applies if the regulator refers the dispute to the Governor in Council to decide.
- (2) Before deciding the dispute, the Governor in Council must—
- (a) give the parties a reasonable opportunity to make written submissions about the dispute; and
 - (b) have regard to any submissions made under paragraph (a).
- (3) The submissions must be made to the regulator.
- (4) The Governor in Council's decision binds the parties.

270 Exclusion of other jurisdictions

- (1) If the dispute has been referred to the Governor in Council, the following matters are not justiciable by a court or tribunal at the instigation of a party to the dispute—
- (a) the issue in the dispute;
 - (b) any issue that emerges in the course of the Governor in Council's deciding of the dispute.
- (2) However, subsection (1) does not apply if the proceeding before the court or tribunal was started before the dispute was referred to the Governor in Council.

Chapter 5A Industry codes

Part 1 Initial industry codes

270A Making of initial industry codes by Minister

- (1) The Minister must make initial industry codes for reticulated processed natural gas markets to apply to distributors and retailers and their customers.
- (2) A code must state the distributors and retailers to which it applies.
- (3) A code is not subordinate legislation.

Note—

QCA must keep a register of industry codes and publish them on its website. See section 310A and the QCA Act, sections 227A to 227C.

270B Specific matters for which code may provide

Without limiting section 270A, an initial industry code may provide for all or any of the following—

- (a) the rights and obligations of distributors, retailers and customers about customer connection services and customer retail services, including, for example—
 - (i) their rights and obligations in relation to the discontinuance or recommencement of the services; and
 - (ii) rights of compensation for a contravention of an obligation mentioned in subparagraph (i);
- (b) minimum terms for small customers under connection contracts and retail contracts, including permitted departures from the terms;
- (c) minimum requirements for distributors and retailers in dealing with customer complaints;
- (d) marketing conduct of retail entities to small customers;
- (e) metering;

- (f) customer transfers;
- (g) fees payable to the GRMO by distributors or retailers in relation to the code.

270C Gazettal and taking of effect of code

- (1) The Minister must, as soon as practicable after making an initial industry code, publish a gazette notice stating the Minister has made the code and where it may be inspected.
- (2) The code takes effect on the later of the following days—
 - (a) a day of effect stated in the gazette notice;
 - (b) if no day of effect is stated in the notice—the day the notice is gazetted.

270D Tabling of code

- (1) Within 14 days after an initial industry code takes effect, the Minister must table a copy in the Legislative Assembly.
- (2) The copy is tabled for information only.
- (3) A failure to table the copy does not affect the code's ongoing effect.

Part 2 QCA industry codes**270E QCA may make industry code**

- (1) Subject to sections 270F and 270G, QCA may make industry codes.
- (2) However, a code made by QCA has no effect unless it is approved by the Minister.
- (3) A code may provide for any matter that may be provided for under an initial industry code.
- (4) Sections 270A and 270B apply to the making of an industry code by QCA as if the code were an initial industry code.

270F QCA code objective

- (1) The objective (the *QCA code objective*) of an industry code made by QCA is to promote efficient investment in, and efficient use of, processed natural gas services for the long-term interests of Queensland customers of processed natural gas about price, quality, safety, reliability and security of supply of processed natural gas.
- (2) QCA may make an industry code only if it is satisfied the code will, or is likely to, contribute to the achievement of the QCA code objective.

270G Required consultation

- (1) This section applies if QCA proposes to make an industry code, unless QCA considers the code—
 - (a) is needed urgently; or
 - (b) can not be materially detrimental to anyone's interests.
- (2) Before QCA makes the industry code it must prepare a draft of the code and engage in the consultation prescribed under a regulation.

270H Ministerial approval

- (1) QCA must, as soon as practicable after making an industry code, give the Minister a copy.
- (2) The Minister may, within 20 business days after receiving the code, decide whether to approve it.
- (3) The Minister must, in making the decision, have regard to the QCA code objective.
- (4) If the decision is not to approve the code, the Minister must, as soon as practicable after the making of the decision, give QCA a notice stating the decision, and the reasons for it.
- (5) If the Minister does not make the decision within the 20 business days, the Minister is taken to have approved the code.

270I When approved QCA industry code takes effect

- (1) This section applies for an industry code made by QCA only if the Minister approves the code.
- (2) QCA must, as soon as practicable after the approval, publish a gazette notice stating the Minister has approved the code and where it may be inspected.
- (3) The code takes effect on the later of the following days—
 - (a) a day of effect stated in the gazette notice;
 - (b) if no day of effect is stated in the notice—the day the notice is gazetted.

270J Tabling of QCA industry code

- (1) If an industry code made by QCA takes effect, the Minister must, within 14 sitting days, table a copy of the code in the Legislative Assembly.
- (2) The copy is tabled for information only.
- (3) A failure to table the copy does not affect the code's ongoing effect.

Part 3 Review of industry codes and related matters

270K Direction by Minister to review

- (1) The Minister may, by gazette notice, give QCA a written direction to conduct a review into—
 - (a) any matter relating to the Queensland reticulated processed natural gas markets; or
 - (b) the operation and effectiveness of an industry code; or
 - (c) any matter relating to an industry code.
- (2) QCA must comply with the direction.
- (3) QCA must publish the direction on its website.

270L Terms of reference

The direction may do all or any of the following—

- (a) state the terms of reference of the review;
- (b) require QCA to give the Minister a report on the review within a stated period;
- (c) require QCA to make the report publicly available or available to a stated entity;
- (d) require QCA to, during the review, make a draft report publicly available or available to a stated entity;
- (e) require QCA to, in conducting the review—
 - (i) consider stated matters; and
 - (ii) have stated objectives;
- (f) give QCA other directions the Minister considers appropriate.

270M Notice of review or amended term of reference or direction

QCA must publish a notice of the following on its website and in a Statewide newspaper—

- (a) the review;
- (b) if a term of reference or direction relating to the review is amended—the amended term of reference or direction.

270N Conduct of review

- (1) The QCA Act, part 6, other than section 171, (the *applied part*) applies for the review—
 - (a) as if a reference in the applied part to an investigation were a reference to the review; and
 - (b) as if the QCA Act, section 176(3), required the notice mentioned in that subsection to be given to any entity that QCA knows would be potentially affected by the review.

- (2) However, the applied part applies subject to any requirement or direction of the Minister.

Part 4 Amending industry codes

2700 Application of pt 4

This part applies if QCA proposes to amend an industry code.

2700A Required consultation for amendment

- (1) Before QCA may make the amendment it must prepare a draft of the amendment and engage in the consultation prescribed under a regulation.
- (2) However, subsection (1) does not apply if QCA considers the amendment—
 - (a) is needed urgently; or
 - (b) does not materially detriment anyone's interests; or
 - (c) is of an uncontroversial nature; or
 - (d) corrects an error.
- (3) To remove any doubt, it is declared that subsection (2)(d) applies even if the correction is materially detrimental to someone's interests.

2700B Application of pt 2 other than its consultation provision

The provisions of part 2, other than section 270G, apply to the amendment—

- (a) as if a reference in the provisions to making the code were a reference to the making of the amendment; and
- (b) as if a reference in the provisions to the code were a reference to the amendment.

Part 5 Enforcing industry codes

Division 1 Code contravention notices

Subdivision 1 Preliminary

270P Application of div 1

This division applies if QCA suspects—

- (a) a distributor or retailer—
 - (i) has contravened, or is contravening, an industry code; or
 - (ii) is involved in an activity that is likely to result in a contravention of an industry code; and
- (b) the contravention or likely contravention is, or is likely to be, a material contravention of the code.

270Q Criteria for deciding material contravention

- (1) This section applies to the making of any decision under this Act about whether a contravention of an industry code is a material contravention of the code.
- (2) Regard must be had to the QCA code objective.
- (3) Subsection (2) does not limit or otherwise affect what may be considered in making the decision.

Subdivision 2 Warning notices

270R Warning notice may be given

- (1) QCA may give the distributor or retailer a notice (the *warning notice*), warning the distributor or retailer that QCA proposes to give the distributor or retailer a further notice about the contravention or likely contravention (a *code contravention notice*).

- (2) QCA must make the decision about whether to give the warning notice as soon as practicable after forming the suspicion.
- (3) However, a failure to comply with subsection (2) does not affect the validity of the warning notice or any subsequent code contravention notice.
- (4) Despite subsections (2) and (3), if the warning notice is proposed to be given for a contravention, it can only be given within 2 years after the day on which the contravention happened.

270S Requirements for warning notice

- (1) The warning notice must state each of the following—
 - (a) particulars of the contravention or likely contravention;
 - (b) that QCA proposes to give the distributor or retailer a code contravention notice unless the distributor or retailer—
 - (i) takes steps reasonably necessary to remedy the contravention or avoid the likely contravention; and
 - (ii) gives QCA a written assurance (a ***conduct assurance***), in the terms stated in the warning notice, that the distributor or retailer will—
 - (A) avoid any similar future contravention; and
 - (B) take steps reasonably necessary to avoid a future recurrence of the contravention;
 - (c) a period (the ***warning period***) after which the code contravention notice may be given unless the warning notice is complied with;
 - (d) that the distributor or retailer may make, within the period, written submissions to show why the proposed code contravention notice should not be given.
- (2) The warning period must be—
 - (a) if the warning notice is given because QCA considers the contravention or likely contravention is of a type that

requires urgent action—a period that QCA considers is reasonable in the circumstances; or

- (b) otherwise—at least 20 business days.
- (3) The warning notice may also state the steps QCA reasonably believes are necessary to remedy the contravention or avoid its future recurrence, or avoid the likely contravention.

Examples of steps that may remedy a contravention—

- refunding an amount wrongly paid because of the contravention
- paying compensation to someone who has damage, injury or loss because of the contravention
- disclosing particular information
- publishing advertisements about the contravention or action to remedy it

270T Considering submissions on warning notice

- (1) QCA must consider any written submission made under section 270S(1)(d) by the distributor or retailer within the period stated in the warning notice.
- (2) If QCA at any time decides not to give the proposed code contravention notice, it must, as soon as practicable, give the distributor or retailer notice of the decision.

Subdivision 3 Action after warning notice

270U Giving of code contravention notice

- (1) QCA may give the proposed code contravention notice if—
- (a) the distributor or retailer has not complied with the warning notice; and
- (b) after complying with section 270T, QCA still believes the code contravention notice ought to be given.
- (2) The code contravention notice must state—
- (a) that the distributor or retailer—
- (i) has contravened, or is contravening, an industry code; or

- (ii) is likely to contravene an industry code; and
 - (b) the contravention or likely contravention is, or is likely to be, a material contravention of the code; and
 - (c) particulars of the contravention or likely contravention.
- (3) Subsection (4) applies if the warning notice was given on the basis of a contravention of the industry code and the distributor or retailer—
- (a) has taken steps reasonably necessary to remedy the contravention; but
 - (b) has not given the conduct assurance required under the warning notice.
- (4) QCA may give the code contravention notice on the basis that the distributor or retailer is still involved in an activity that is, or is likely to result in, a material contravention of the industry code.

Note—

Under section 307A, a certified copy of a conduct notice is, for a proceeding under or relating to this Act, amongst other things, evidence of the contravention or other things stated in it.

270V Duration of code contravention notice

The code contravention notice—

- (a) comes into effect—
 - (i) when it is made; or
 - (ii) if it states a later time—at the later time; and
- (b) ends—
 - (i) on the day stated in the notice; or
 - (ii) if it is cancelled before that day—when it is cancelled.

Division 2 Proceedings

270W Proceeding for civil penalty order

- (1) This section applies if, on the application of QCA, the Supreme Court is satisfied a distributor or retailer has—
 - (a) committed a material contravention of an industry code; or
 - (b) attempted to a commit a material contravention of an industry code; or
 - (c) been involved in a material contravention of an industry code.
- (2) The court may order the distributor or retailer to pay the State as a civil penalty an amount of no more than—
 - (a) for an individual—\$100000; or
 - (b) for a corporation—\$500000.
- (3) In fixing the penalty, the court must consider—
 - (a) the nature and extent of—
 - (i) the contravention; and
 - (ii) loss or damage suffered because of the contravention; and
 - (b) the circumstances in which the contravention took place; and
 - (c) whether the distributor or retailer has previously been found by the court in proceedings under this Act to have engaged in any similar conduct.
- (4) For subsection (1)(c), a distributor or retailer is involved in a contravention if the distributor or retailer—
 - (a) has aided, abetted, counselled or procured the contravention; or
 - (b) has induced the contravention, whether through threats, promises or in another way; or

- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

Note—

See also chapter 6, part 3, division 3 (Provisions for civil penalty proceedings).

270X How order enforced

If the Supreme Court orders payment of an amount under section 270W(2), the State may enforce the order as a judgment of the court for a debt of that amount.

270Y Injunctions

- (1) The Supreme Court may, on the application of QCA, grant an injunction if satisfied a distributor or retailer has engaged or is proposing to engage, in conduct that constitutes, or would constitute any of the following—
 - (a) a contravention of an industry code;
 - (b) attempting to contravene an industry code;
 - (c) aiding, abetting, counselling or procuring a distributor or retailer to contravene an industry code;
 - (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a distributor or retailer to contravene an industry code;
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a distributor or retailer of an industry code;
 - (f) conspiring with others to contravene an industry code.
- (2) An injunction may be granted on conditions.
- (3) The court may also grant an injunction by consent of all parties to the application, whether or not the court is satisfied a distributor or retailer has engaged, or is proposing to engage, in conduct of a type mentioned in subsection (1).
- (4) The court may grant an interim injunction pending its decision on the application.

- (5) The court must not require anyone, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (6) The court may amend an injunction or interim injunction.
- (7) An injunction or interim injunction restraining a distributor or retailer from engaging in conduct may be granted whether or not—
 - (a) it appears to the court that the distributor or retailer intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) the distributor or retailer has previously engaged in conduct of that kind; and
 - (c) there is an imminent danger of substantial damage to another person if the person engages in conduct of that kind.
- (8) An injunction or interim injunction requiring a distributor or retailer to do an act or thing may be granted whether or not—
 - (a) it appears to the court that the distributor or retailer intends to fail again, or to continue to fail, to do that act or thing; and
 - (b) the distributor or retailer has previously failed to do the act or thing; and
 - (c) there is an imminent danger of substantial damage to another person if the distributor or retailer does not do the act or thing.

270Z Conduct by directors, servants or agents

- (1) This section applies to a proceeding under this division.
- (2) If—
 - (a) the proceeding concerns alleged conduct engaged in by a distributor or retailer to which an industry code applies; and
 - (b) it is necessary to prove the distributor or retailer's state of mind;

it is enough to prove that a director, servant or agent (a *representative*) of the distributor or retailer, acting within the

scope of the representative's actual or apparent authority, had the state of mind.

- (3) Conduct engaged in for a distributor or retailer by the following persons is taken to have been engaged in by the distributor or retailer—
- (a) a representative of the distributor or retailer, acting within the scope of the representative's actual or apparent authority;
 - (b) another person at the direction, or with the consent or agreement, of a representative of the distributor or retailer, if the giving of the direction, consent or agreement was within the scope of the representative's actual or apparent authority.
- (4) Conduct engaged in for a distributor or retailer (the *principal*) by the following persons is taken to have been engaged in by the principal—
- (a) a servant or agent of the principal, acting within the scope of the servant's or agent's actual or apparent authority;
 - (b) another person at the direction or with the consent or agreement, of a servant or agent of the principal, if the giving of the direction, consent or agreement was within the scope of the servant's or agent's actual or apparent authority.
- (5) In this section—

consent or agreement includes an implied consent or agreement.

state of mind, of a person, may include—

- (a) knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the person's intention, opinion, belief or purpose.

Division 3 Referrals to regulator

270ZA When QCA must refer material contravention

If the Supreme Court decides a contravention of an industry code by a distributor or retailer is a material contravention of the code, QCA must refer the matter to the regulator.

270ZB When QCA may refer material contravention

- (1) If QCA has given a distributor or retailer a warning notice for a material contravention or likely material contravention of an industry code, QCA may refer the matter to the regulator.
- (2) The referral may be made whether or not a code contravention notice has been given for, or a proceeding started under this division about, the contravention or likely contravention.

Note—

If QCA has applied for a civil penalty order under section 270W, section 270ZK prevents the regulator from imposing a similar penalty.

- (3) However, the matter can not be referred before the giving of the warning notice.

270ZC Guidelines for exercise of QCA powers for civil penalties

- (1) QCA must publish on its website guidelines about when it will do each of the following—
 - (a) under section 270W, apply for a civil penalty order;
 - (b) under section 270ZB, refer matters to the regulator.
- (2) Before publishing the guidelines, QCA must, take steps it considers appropriate to consult with distributors and retailers.
- (3) The guidelines are not legally binding on QCA and are non-justiciable.
- (4) The guidelines must include information to the effect of subsection (3).

270ZD How regulator deals with referral

If, under this subdivision, QCA refers a matter to the regulator, the regulator may take all or any of the following action against the relevant distributor or retailer—

- (a) for a distributor or retailer—impose a civil penalty, under chapter 6, part 1A;
- (b) for a distributor—action under chapter 2, part 1, division 3;
- (c) for a retailer—action under chapter 3, part 1, division 3.

Division 4 Production of documents or information**270ZE Notice to produce documents or information**

- (1) This section applies if QCA is conducting an investigation to find out whether a distributor or retailer is complying with an industry code.
- (2) QCA may, by notice to the distributor or retailer, require the distributor or retailer to give QCA all or any the following things QCA believes, on reasonable grounds, are relevant to the investigation—
 - (a) information within the distributor's or retailer's knowledge or possession;
 - (b) documents in the distributor's or retailer's custody, possession or power.
- (3) The notice must state—
 - (a) the information or documents required; and
 - (b) a period in which the documents or information are to be given of no less than 7 days; and
 - (c) a reasonable place at which the documents or information are to be given.
- (4) The distributor or retailer must comply with the notice, unless it has a reasonable excuse.

Maximum penalty—500 penalty units.

- (5) A distributor or retailer is not required to comply with the notice if the distributor or retailer claims, on the ground of self-incrimination, a privilege the distributor or retailer would be entitled to claim against giving the information were the distributor or retailer a witness in a prosecution for an offence in the Supreme Court.
- (6) If the distributor or retailer claims that complying with the notice may tend to incriminate it, QCA or the distributor or retailer may make an application to the Supreme Court to decide the validity of the claim.

270ZF Protection of confidential information given for investigation

- (1) This section applies if—
 - (a) QCA is conducting an investigation to find out whether a distributor or retailer is complying with an industry code; and
 - (b) the distributor or retailer gives QCA information for the purpose of the investigation, whether or not the giving of the information was required under section 270ZE.
- (2) The QCA Act, section 187 applies as if the information had been made available for an investigation under that Act.
- (3) In this section—
information includes a document.

Division 5 Audits

270ZG QCA's powers concerning audit of compliance with industry code

- (1) QCA may, by notice to a distributor or retailer, require the distributor or retailer to—
 - (a) carry out an internal audit of all or any of the following—

- (i) the distributor's or retailer's compliance with an industry code, either generally or about a stated particular matter or matters;
 - (ii) the reliability and quality of information given by the distributor or retailer to QCA, under this Act;
or
 - (b) appoint a person as an independent auditor to carry out an audit of all or any of the things mentioned in paragraph (a).
- (2) The notice may state terms of reference QCA requires for carrying out the audit.
 - (3) QCA may appoint a person as an independent auditor to carry out an audit of all or any of the things mentioned in subsection (1)(a) concerning the distributor or retailer, if—
 - (a) the distributor or retailer does not comply with a notice given to it under the subsection; or
 - (b) QCA reasonably considers that a person appointed under subsection (1) does not have appropriate qualifications or experience for carrying out the audit.
 - (4) A person may be appointed as an independent auditor under subsection (1)(b) or (3) only if the appointer reasonably considers the person has the appropriate qualifications or experience for carrying out the audit.

270ZH Responsibility for cost of audit

- (1) A distributor or retailer required under section 270ZG(1) to carry out, or appoint an independent auditor to carry out, an audit is responsible for the cost of the audit.
- (2) If QCA appoints an independent auditor to carry out an audit concerning a distributor or retailer, the distributor or retailer must reimburse QCA for the cost of the audit if required to do so by QCA.

270ZI Independent auditor may require reasonable help or information

(1) An independent auditor appointed under section 270ZG to carry out an audit concerning a distributor or retailer may require the distributor or retailer to give the auditor—

(a) reasonable help to carry out the audit; or

Examples—

- access to the distributor's or retailer's premises and records
- help from the distributor's or retailer's employees

(b) information, in a form reasonably required by the auditor, to help the auditor carry out the audit.

(2) A distributor or retailer required to give reasonable help under subsection (1)(a), or information under subsection (1)(b), must comply with the requirement unless the distributor or retailer has a reasonable excuse.

Maximum penalty—1000 penalty units.

(3) If the distributor or retailer is an individual, it is a reasonable excuse for the individual not to comply with the requirement if complying with the requirement might tend to incriminate the individual.

270ZJ Audit report and submissions on report

(1) A distributor or retailer required under section 270ZG(1) to carry out, or appoint an independent auditor to carry out, an audit must give a copy of the audit report to QCA.

(2) The copy must be given as soon as practicable after the audit is completed.

(3) If QCA appoints an independent auditor to carry out an audit concerning a distributor or retailer, QCA must give the distributor or retailer—

(a) a copy of the draft audit report and an opportunity to make submissions to QCA on the draft report; and

(b) a copy of the final audit report and an opportunity to make further submissions to QCA on the final report.

Part 6 Miscellaneous provisions

270ZJA Relationship with Fair Trading Act 1989

To remove any doubt, it is declared that, subject to section 270ZJB, an industry code does not limit or otherwise affect the operation of the *Fair Trading Act 1989*.

270ZJB Compliance with particular requirements under Fair Trading Act 1989, s 61 for door-to-door contracts

- (1) This section applies if—
 - (a) a retailer enters into, or proposes to enter into, a negotiated retail contract with a small customer; and
 - (b) the contract is, or would if entered into be, a prescribed contract under the *Fair Trading Act 1989 (FTA)*, part 3, division 4; and
 - (c) an industry code applies to the contract.
- (2) The contract is taken to include the statement required under FTA, section 61(1)(f) (*paragraph (f)*) if a statement included in the contract as otherwise required under paragraph (f) states the cooling-off period that the industry code requires for the contract instead of the cooling-off period mentioned in paragraph (f).

Note—

See clause 4.3 (Cooling-off) of the initial industry code commencing on the FRC day.

- (3) The notices required to be given under FTA, section 61(1)(g) (*paragraph (g)*) are taken to have been given, and the requirements for the notices stated in FTA, section 61(1)(h) to (j) are taken to be complied with, if—
 - (a) the customer is given a notice (the *substitute notice*) by or for the retailer in relation to the entering into of the contract, as required under the industry code; and
 - (b) the substitute notice complies with—

- (i) all requirements under the industry code about explaining the customer's right to rescind the contract; and

Note—

See clause 5.6 (Written disclosure statement) of the initial industry code commencing on the FRC day.

- (ii) the requirements for a notice or notices, stated in FTA, section 61(1)(h)(i) and (ii), (i) and (j); and
- (c) the substitute notice gives all information that—
 - (i) is required to be given under the approved forms of notice under paragraph (g); and
 - (ii) is relevant to the goods and services to be provided under the contract.
- (4) The substitute notice need not comply with FTA, s 61(1)(h)(iii).

Chapter 6 Miscellaneous provisions

Part 1A Civil penalty for particular contraventions

270ZK Application of pt 1A

- (1) This part applies if—
 - (a) any of the following are referred to the regulator in relation to a distributor or retailer—
 - (i) a material contravention of an industry code, referred under section 270ZA or 270ZB;
 - (ii) a contravention of a compliance direction under the *Energy Ombudsman Act 2006*, referred under section 46 of that Act; or

- (b) a distributor or retailer does not comply with a condition of the distributor's or retailer's authority under this Act in relation to the *Energy Ombudsman Act 2006*.
- (2) However, if the contravention is a contravention of an industry code, this part applies only if QCA has not applied for a civil penalty order under section 270W.
- (3) To remove any doubt, it is declared that this part does not limit or otherwise affect the taking of action or proposed action under chapter 2, part 1, division 3 or chapter 3, part 1, division 3 concerning an authority under this Act held by the distributor or retailer.

270ZL Regulator may impose civil penalty

- (1) The regulator may, for the State, impose a civil penalty on the distributor or retailer of no more than the monetary value of 1333 penalty units.
- (2) However, the power under subsection (1) may be exercised only if—
 - (a) the regulator has given the distributor or retailer a notice stating each of the following—
 - (i) that the regulator proposes to impose the penalty;
 - (ii) the grounds for imposing the proposed penalty;
 - (iii) the facts and circumstances that are the basis for the grounds;
 - (iv) that the distributor or retailer may, within a stated period of at least 20 business days, make written submissions to show why the penalty should not be imposed; and

Note—

See also chapter 6, part 3, division 3 (Provisions for civil penalty proceedings).

- (b) the regulator has considered any written submissions made under paragraph (a)(iv) within the period stated in the notice.

270ZM Information notice about and taking effect of decision

- (1) If the regulator decides to impose the civil penalty, the regulator must, as soon as practicable after making the decision, give the distributor or retailer an information notice about the decision.
- (2) The decision takes effect on the later of the following days—
 - (a) the day the information notice is given;
 - (b) a later day of effect stated in the notice.

270ZN Civil penalty recoverable as a debt

If the regulator imposes the civil penalty, the State may recover the amount of the penalty as a debt.

Part 1 Reviews and appeals**Division 1 Reviews****271 Who may apply for review**

- (1) A person who has been given, or is entitled to be given, an information notice about a decision under this Act mentioned in schedule 1 (an *original decision*) may apply for a review of the decision (a *review application*).
- (2) A review application may be made only to the following person (the *reviewer*)—
 - (a) if the original decision to which the application relates was made by the regulator—the Minister;
 - (b) otherwise—the regulator.

272 Requirements for making review application

- (1) A review application must be—
 - (a) made within 20 business days after—

- (i) if the person has been given an information notice about the original decision to which the application relates—the day the person is given the notice; or
 - (ii) if subparagraph (i) does not apply—the day the person otherwise becomes aware of the original decision; and
 - (b) made in the approved form; and
 - (c) accompanied by a statement of the grounds on which the applicant seeks the review of the decision; and
 - (d) supported by enough information to enable the decision to be reviewed.
- (2) However, the reviewer may extend the period for making the application.

273 Stay of operation of original decision

- (1) The reviewer may grant a stay of the original decision to secure the effectiveness of the review.
- (2) A stay—
 - (a) may be given on the conditions the reviewer considers appropriate; and
 - (b) operates for the period fixed by the reviewer; and
 - (c) may be amended or cancelled by the reviewer.
- (3) The period of a stay under this section must not extend past the time when the reviewer decides the review.
- (4) The review affects the decision, or carrying out of the decision, only if it is stayed.

274 Review decision

- (1) The reviewer must, within 20 business days after the review application is made—
 - (a) review the original decision; and
 - (b) make a decision (the *review decision*) to—
 - (i) confirm the original decision; or

- (ii) amend the original decision; or
 - (iii) substitute another decision for the original decision.
- (2) If the review decision confirms the original decision, for the purpose of an appeal, the original decision is taken to be the review decision.
- (3) If the review decision amends the original decision, for the purpose of an appeal, the original decision as amended is taken to be the review decision.

275 Review procedure

- (1) A review application for an original decision, other than an original decision made by the reviewer personally, must not be dealt with by—
- (a) the person who made the decision; or
 - (b) a person in a less senior office than the person who made the decision.
- (2) Subsection (1) applies despite the *Acts Interpretation Act 1954*, section 27A(7).³⁸
- (3) The reviewer may, in making the review decision, seek and take into account advice or information from any other person, including, for example, a review panel established by the reviewer.

276 Reviewer may seek advice or information

- (1) To help the reviewer make the review decision, the reviewer may seek advice or information from any other person.
- (2) The matters the reviewer may take into account in making the review decision include any advice or information obtained under subsection (1) for the decision or another review decision the reviewer has been asked to make.
- (3) If the reviewer obtains advice or information under subsection (1) for the review decision or, in making the decision, takes

³⁸ *Acts Interpretation Act 1954*, section 27A (Delegation of functions or powers)

into account advice or information the reviewer obtained for another review decision, the reviewer must—

- (a) if the advice or information is written—give a copy to the parties to the review; or
- (b) if the advice or information is oral—disclose the substance of the advice to the parties.

277 Offence about disclosure of advice or information

- (1) This section applies if, under section 276, the reviewer gives a copy of advice or information, or discloses the substance of advice or information, to a party to the review.
- (2) The party must not disclose the advice or information to another person unless the party has a reasonable excuse.
Maximum penalty—20 penalty units.
- (3) It is a reasonable excuse for the party to make the disclosure if the disclosure is for the review or an appeal against the review decision.

278 Notice of review decision

- (1) The reviewer must, within 10 business days after making a review decision, give the applicant notice (a *review notice*) of the decision.
- (2) If the review decision is not the decision sought by the applicant, the review notice must also include, or be accompanied by, an information notice about the decision.
- (3) If the reviewer does not give the review notice within the 10 business days, the reviewer is taken to have made a review decision confirming the original decision.

Division 2 Appeals

279 Who may appeal

- (1) A person who has been given, or is entitled to be given, a review notice for a review decision may appeal against the decision to the District Court.
- (2) A person who has been given, or is entitled to be given, an information notice about a decision under section 233³⁹ may appeal against the decision to the District Court.
- (3) A distributor or retailer who, under section 270ZM, has been given, or is entitled to be given, an information notice about a decision under section 270ZL to impose a civil penalty may appeal against the decision to the District Court.

280 Period to appeal

- (1) The appeal must be started within 20 business days after—
 - (a) for an appeal from a review decision—
 - (i) if the person has been given a review notice about the review decision to which the appeal relates—the day the person is given the notice; or
 - (ii) if subparagraph (i) does not apply—the day the person otherwise becomes aware of the review decision; or
 - (b) for an appeal from another decision—
 - (i) if the person has been given an information notice about the decision—the day the person is given the notice; or
 - (ii) if subparagraph (i) does not apply—the day the person otherwise becomes aware of the decision.
- (2) However, the District Court may, at any time, extend the period for making an appeal.

39 Section 233 (Directions for prices notification)

281 Starting appeal

- (1) The appeal is started by filing a written notice of appeal with the District Court.
- (2) A copy of the notice must be served on the original decider.

282 Stay of operation of decision

- (1) The District Court may grant a stay of the decision to secure the effectiveness of the appeal.
- (2) A stay—
 - (a) may be given on the conditions the court considers appropriate; and
 - (b) operates for the period fixed by the court; and
 - (c) may be amended or cancelled by the court.
- (3) The period of a stay under this section must not extend past the time when the court decides the appeal.
- (4) The appeal affects the decision, or carrying out of the decision, only if it is stayed.

283 Hearing procedures

- (1) In deciding an appeal, the District Court—
 - (a) has the same powers as the original decider; and
 - (b) is not bound by the rules of evidence; and
 - (c) must comply with natural justice; and
 - (d) may hear the appeal in court or in chambers.
- (2) An appeal is by way of rehearing, unaffected by the decision.
- (3) Subject to subsections (1) and (2), the procedure for the appeal is—
 - (a) in accordance with the rules for the court; or
 - (b) in the absence of relevant rules, as directed by the court.
- (4) A power under an Act to make rules for the court includes power to make rules for appeals under this division.

284 District Court's powers on appeal

- (1) In deciding an appeal, the District Court may—
 - (a) confirm the decision; or
 - (b) set aside the decision and substitute another decision; or
 - (c) set aside the decision and return the issue to the original decider with the directions the court considers appropriate.
- (2) If the court substitutes another decision, the substituted decision is, for this Act, other than this part, taken to be the decision of the original decider.

285 Appeals from District Court's decision

An appeal to the Supreme Court against a decision of the District Court may be made only on a question of law.

Part 2 General offences**286 Unlawfully operating distribution pipeline**

- (1) A person must not unlawfully operate a distribution pipeline.
Maximum penalty—500 penalty units.
- (2) A person unlawfully operates a distribution pipeline if the person transports processed natural gas through the pipeline or provides customer connection services to premises in relation to the pipeline, unless—
 - (a) a distribution authority authorising the transportation or customer connection services is in force and the person holds, or is acting under, the authority; or
 - (b) the pipeline is completely within a lot, or contiguous lots, owned by the same person; or

Example—

a pipeline in a shopping centre on a lot or lots owned by the same person

- (c) the pipeline is completely within contiguous lots if the processed natural gas is only transported to 1 other person; or
- (d) the person is, or is acting for, an on-supplier and the transport or customer connection services complies with chapter 3, part 3; or
- (e) the transport or customer connection services is carried out under an insufficiency of supply direction.

287 Unlawful tampering with gas infrastructure

A person must not wilfully tamper with a distributor's or LPG distributor's gas infrastructure unless the person has a lawful excuse.

Maximum penalty—500 penalty units.⁴⁰

288 Unlawfully selling reticulated processed natural gas

- (1) A person must not unlawfully sell reticulated processed natural gas.

Maximum penalty—500 penalty units.⁴¹

- (2) A person unlawfully sells reticulated processed natural gas if the person sells reticulated processed natural gas to someone else, unless—
 - (a) a retail authority or point-to-point distribution authority authorising the sale is in force and the person holds, or is acting under, the authority; or
 - (b) the relevant distribution pipeline is completely within a lot, or contiguous lots, owned by the same person; or

Example—

a pipeline in a shopping centre on a lot or lots owned by the same person

40 See also section 295 (Evidence of tampering with gas infrastructure).

41 See also section 302 (Additional consequences of unlawfully selling reticulated processed natural gas).

- (c) the relevant distribution pipeline is completely within contiguous lots if the processed natural gas is only transported to 1 other person; or
- (d) the person is, or is acting for, an on-supplier and the on-supplier has complied with chapter 3, part 3⁴² in relation to the sale and any on-supply agreement that relates to the sale; or
- (e) the sale is made under an insufficiency of supply direction.

289 Unlawfully taking processed natural gas or LPG

- (1) A person must not unlawfully take processed natural gas or LPG.

Maximum penalty—500 penalty units.

- (2) A person unlawfully takes processed natural gas or LPG if the person takes processed natural gas or LPG from any of the following, unless the person has a lawful excuse—
 - (a) a distribution pipeline;
 - (b) an LPG distribution pipeline;
 - (c) a pipeline connected from the exit point of a meter installed for a customer's premises.⁴³

290 False or misleading information

- (1) A person must not make an entry in a document required to be kept under this Act knowing the entry to be false or misleading in a material particular.

Maximum penalty—60 penalty units.

- (2) A person of whom a direction or requirement under this Act has been made must not state anything or give a document or

42 Chapter 3, part 3 (On-supply)

43 See also section 297 (Evidence of unlawful taking of processed natural gas or LPG).

thing in response to the direction or requirement that the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.⁴⁴

291 Attempts to commit offences

- (1) A person who attempts to commit an offence against this Act commits an offence.

Maximum penalty for an attempt—half the maximum penalty for the completed offence.

- (2) The Criminal Code, section 4⁴⁵ applies to subsection (1).

Part 3 Offence proceedings

Division 1 General provisions

292 Offences under Act are summary

- (1) An offence against this Act is a summary offence.
- (2) A proceeding for an offence against this Act must start within the later of the following periods to end—
- (a) 1 year after the commission of the offence;
 - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

293 Statement of complainant's knowledge

In a complaint starting a proceeding for an offence against this Act, a statement that the matter of the complaint came to the

44 See also section 294 (Allegations of false or misleading matters).

45 The Criminal Code, section 4 (Attempts to commit offences)

complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

294 Allegations of false or misleading matters

- (1) This section applies to a proceeding for an offence against this Act described as involving—
 - (a) false or misleading information; or
 - (b) a false or misleading document or statement.⁴⁶
- (2) It is enough for the complaint starting the proceeding to state the document, information or statement was 'false or misleading' to the defendant's knowledge, without specifying which.
- (3) In the proceeding, evidence that the document, information or statement was given or made recklessly is evidence that it was given or made so as to be false or misleading.

295 Evidence of tampering with gas infrastructure

If—

- (a) on, or in association with, a customer's processed natural gas or LPG installation there exists a way to change or tamper with a distributor's or LPG distributor's gas infrastructure; and
- (b) the gas infrastructure is in the control or custody of the customer; and
- (c) there is a change to or tampering with the gas infrastructure;

evidence of the existence of the way is evidence that the change or tampering has been caused by the customer.⁴⁷

⁴⁶ See section 290 (False or misleading information).

⁴⁷ See section 287 (Unlawful tampering with gas infrastructure).

296 Conduct of representatives

- (1) This section applies to a proceeding for an offence against this Act if it is relevant to prove a person's state of mind about particular conduct.
- (2) It is enough to show—
 - (a) the conduct was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (3) Conduct engaged in for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been engaged in also by the person unless the person proves—
 - (a) if the person was in a position to influence the representative in relation to the conduct—the person took reasonable steps to prevent the conduct; or
 - (b) the person was not in a position to influence the representative in relation to the conduct.
- (4) In this section—

engaging in conduct includes failing to engage in conduct.

representative means—

- (a) for a corporation—an agent, employee or executive officer of the corporation; or
- (b) for an individual—an agent or employee of the individual.

state of mind of a person includes the person's—

- (a) belief, intention, knowledge, opinion or purpose; and
- (b) reasons for the belief, intention, opinion or purpose.

Division 2 Provisions for proceedings for unlawfully taking processed natural gas or LPG

297 Evidence of unlawful taking of processed natural gas or LPG

If—

- (a) on, or in association with, a customer's processed natural gas or LPG installation there exists a way to unlawfully take processed natural gas or LPG; and
- (b) processed natural gas or LPG is unlawfully taken from the processed natural gas or LPG installation;

evidence of the existence of the way is evidence that the customer has unlawfully taken the processed natural gas or LPG.

298 Proceeding may be for a period

If the day or days on which a person is alleged to have been unlawfully taking processed natural gas or LPG can not be established, the person may—

- (a) be charged with 1 offence of unlawfully taking processed natural gas or LPG over, or at some unknown time during, a stated period; and
- (b) be convicted and punished accordingly.

299 Ownership of processed natural gas or LPG for proceeding

In a proceeding for an offence against this or another Act in which it is claimed processed natural gas or LPG has been unlawfully taken, the processed natural gas or LPG is taken to belong to any person through whose distribution or other pipeline the processed natural gas or LPG was being transported when it was unlawfully taken.

Division 3 Provisions for civil penalty proceedings

299A Relationship with criminal proceedings

- (1) This section applies if—
 - (a) action (a *civil penalty proceeding*) is taken against or in relation to a person, consisting of—
 - (i) an application under section 270W for a civil penalty order; or
 - (ii) a referral under section 270ZB to the regulator and any decision in relation to the referral that involves the imposition of a civil penalty; and
 - (b) a criminal proceeding has been started, or has already been started, against the person for an offence; and
 - (c) the conduct that constitutes the offence is the same, or substantially the same, as the conduct the subject of the civil penalty proceeding.
- (2) The civil penalty proceeding must be stayed or not continued.
- (3) However, the civil penalty proceeding may be resumed if, at the end of the criminal proceeding, there is no conviction for the offence.
- (4) Evidence in the civil penalty proceeding of information given, or documents produced, by a person is not admissible in evidence in the criminal proceeding.
- (5) In this section—

conduct includes an omission.

conviction includes a finding of guilt, or the acceptance of a plea of guilt, by a court whether or not a conviction is recorded.

299B Avoidance of multiple penalties

If—

- (a) a civil penalty proceeding under section 299A is taken; and

- (b) conduct, or substantially the same conduct, the subject of the civil penalty proceeding constitutes a contravention of 2 or more industry code provisions;

a civil penalty must not be imposed or ordered in the civil penalty proceeding more than once for that conduct.

Part 4 General remedies⁴⁸

300 Forfeiture and costs of remedial work

- (1) If a court convicts a person for an offence against this Act, it may—
- (a) order the forfeiture to the State of—
 - (i) anything used to commit the offence; or
 - (ii) anything else the subject of the offence; and
 - (b) make any order to enforce the forfeiture it considers appropriate; and
 - (c) order the person to pay the State the amount of costs it incurred for remedial work that was necessary or desirable because of the commission of the offence.
- (2) Forfeiture of a thing may be ordered—
- (a) whether or not it has been seized under another Act; and
 - (b) if it has been seized, whether or not it has been returned to its owner.

⁴⁸ See also sections 101 (Compensation), 145 (Compensation from distributor to owner or occupier) and 221 (Additional consequences of not complying with div 3).

301 Additional consequences of unlawfully operating distribution pipe

- (1) This section applies if, under section 286,⁴⁹ a person unlawfully transports processed natural gas or provides customer connection services.
- (2) The person can not recover from anyone else an amount for—
 - (a) the processed natural gas; or
 - (b) the transportation; or
 - (c) the services.
- (3) Subsection (2) applies whether or not the person has been convicted for an offence against section 286.
- (4) If a court convicts a person for an offence against section 286 relating to the transportation or services, the court, or another court of competent jurisdiction, may order the person to pay the State the amount of any profits the person made because of the transportation or services.

302 Additional consequences of unlawfully selling reticulated processed natural gas

- (1) This section applies if, under section 288,⁵⁰ a person unlawfully sells reticulated processed natural gas to someone else.
- (2) The person can not recover from the other person an amount for—
 - (a) the supply of the processed natural gas; or
 - (b) other customer retail services provided in relation to the supply.
- (3) Subsection (2) applies whether or not the person has been convicted for an offence against section 288.
- (4) If a court convicts a person for an offence against section 288 relating to the supply, the court, or another court of competent

49 Section 286 (Unlawfully operating distribution pipeline)

50 Section 288 (Unlawfully selling reticulated processed natural gas)

jurisdiction, may order the person to pay the State the amount of any profits the person made because of the supply.

303 Recovery of unlawful profits

If a court convicts a distributor or retailer for an offence against this Act, the court or another court of competent jurisdiction, may order the distributor or retailer to pay the State the amount of any profits the distributor or retailer made because of the commission of the offence.

Part 5 Evidentiary provisions

304 Application of pt 5

This part applies to a proceeding under or in relation to this Act.

305 Appointments and authority

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the appointment of a distribution officer;
- (b) the power of the Minister or the regulator to do anything under this Act.

306 Signatures

A signature purporting to be the signature of the Minister or the regulator is evidence of the signature it purports to be.

307 Other evidentiary aids

A certificate purporting to be signed by the regulator stating any of the following matters is evidence of the matter—

- (a) a stated document is a thing as follows given, issued, kept or made under this Act—

- (i) an appointment, approval or decision;
 - (ii) a declaration, direction, notice or requirement;
 - (iii) a distribution or retail authority;
 - (iv) the register of authorities;
 - (v) another record;
- (b) a stated document is another document kept under this Act;
- (c) a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a) or (b);
- (d) that, on a stated day—
- (i) a stated person was given a stated decision, direction or notice under this Act; or
 - (ii) a stated requirement under this Act was made of a stated person;
- (e) on a stated day, or during a stated period, a distribution or retail authority—
- (i) was, or was not, in force; or
 - (ii) was, or was not, subject to a stated condition; or
 - (iii) was, or was not, cancelled;
- (f) a stated amount is payable under this Act by a stated person and has not been paid.

307A Evidentiary effect of code contravention notice

- (1) A document purporting to be a certified copy of a code contravention notice is evidence—
- (a) that the notice was a code contravention notice given under chapter 5A, part 5, division 1; and
 - (b) of the contravention or other matters stated in it; and
 - (c) that the notice has been given to the distributor or retailer stated in the notice.
- (2) In this section—

certified copy means a copy with a certificate purporting to be signed by a member of QCA stating the copy is a true copy of the document it purports to be.

Part 6 Registers

308 Register of authorities

The regulator must keep a register of—

- (a) details about distribution and retail authorities; and
- (b) other documents relating to this Act the regulator considers appropriate.

309 Keeping of register of authorities

- (1) The regulator must include in the register of authorities information about—
 - (a) for a distribution authority—the matters mentioned in section 28(a), (b) and (c); and
 - (b) for a retail authority—the matters mentioned in section 149(a) and (b).⁵¹
- (2) If an authority is cancelled, suspended or surrendered, the regulator must record in the register of authorities—
 - (a) the cancellation, surrender or suspension, and when it took effect; and
 - (b) for a suspension—when the suspension started and, if it is for a period, when it is to end.
- (3) The regulator may include in the register of authorities other details about distribution or retail authorities.
- (4) If under this Act there is a change relating to information kept in the register of authorities the regulator must—

⁵¹ Sections 28 and 149 (Requirements for application)

- (a) amend the register of authorities to reflect the change; and
 - (b) record in the register of authorities when the information was amended.
- (5) For subsection (4), the change is made on the later of the following—
- (a) if the change requires approval under this Act—when it was approved;
 - (b) when it takes effect.

310 Access to register of authorities

- (1) The regulator must—
- (a) keep the register of authorities open for inspection by the public during office hours on business days at—
 - (i) the department’s head office; and
 - (ii) other places the regulator considers appropriate; and
 - (b) allow a person to take extracts, free of charge, from the register of authorities; and
 - (c) if a person asks for a copy of the register of authorities, or a part of it—give the person the copy on payment of an appropriate fee for the copy.
- (2) This section does not apply to any part of the register of authorities that is FOI exempt matter.
- (3) In this section—
- appropriate fee*, for a copy of the register of authorities, or a part of it, means a fee that is no more than the reasonable costs incurred in making and giving the copy.

310A Registers QCA must keep

- QCA must keep a register of each of the following—
- (a) industry codes;
 - (b) each retailer’s standard terms;

- (b) a statutory declaration verifying any information included in the application or any additional information required under paragraph (a).
- (2) If the applicant does not give the decision maker the additional information or declaration by the stated day, the decision maker may refuse the application.
- (3) The applicant must pay any costs incurred in complying with the notice.

313 Power to refund application fee on withdrawal

- (1) If an application under this Act is withdrawn, the person who must decide the application may refund the whole or part of any fee paid for the application.
- (2) In deciding whether to refund, the person must have regard to—
 - (a) when the application was made; and
 - (b) when it was withdrawn; and
 - (c) the extent to which the application was decided before the withdrawal.

Part 8 Other miscellaneous provisions

314 Replacement of authority

- (1) If an authority under this Act has been lost, stolen or destroyed, its holder may apply to the regulator who may issue the authority to replace it.
- (2) The regulator must decide to grant or refuse the application.
- (3) If the regulator is reasonably satisfied the authority has been lost, stolen or destroyed, the regulator must grant the application and replace it.

- (4) If the regulator decides to refuse the application, the regulator must, as soon as practicable, give the holder an information notice about the decision.

315 Protection from civil liability for particular persons

- (1) This section applies to each of the following persons (a *relevant person*)—
- (a) the Minister;
 - (b) the regulator;
 - (c) a person to whom an insufficiency of supply direction has been given and who is complying with the direction;
 - (d) an industry participant to whom a notice under section 245⁵² has been given and who is complying with the notice;
 - (e) the GRMO;
 - (f) a director or other officer of the GRMO acting within the scope of the person's directorship or other office with the GRMO;
 - (g) an employee of the GRMO acting within the course of the employee's employment with the GRMO;
 - (h) QCA.
- (2) A relevant person is not civilly liable to someone for an act done, or omission made, honestly and without negligence under this Act.
- (3) If subsection (2) prevents a civil liability attaching to a relevant person, the liability attaches instead to the State.
- (4) In this section—
- civil liability* includes liability for the payment of costs ordered to be paid in a proceeding for an offence against this Act.

52 Section 245 (Regulator's power to require information from industry participant)

316 Limitation of liability of distributors and retailers

- (1) This section applies if a person incurs a cost, damage or loss because—
 - (a) of a partial or total failure to supply processed natural gas; or
 - (b) defective reticulated processed natural gas was supplied to the person.
- (2) A distributor or retailer is not civilly liable for the cost, damage or loss if—
 - (a) the failure or defect was caused by a circumstance beyond the distributor's or retailer's control; and
 - (b) in relation to the supply, the distributor or retailer—
 - (i) complied with this Act and the conditions of any relevant distribution or retail authority; and
 - (ii) acted in good faith and without negligence.
- (3) Subsection (2)—
 - (a) is subject to any agreement between the person and the distributor or retailer; and
 - (b) does not limit section 6(3).⁵³

316A Protection from liability of member or employee of QCA

- (1) A member or employee of QCA is not civilly liable for an act done, or omission made, in good faith under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a member or employee, the liability attaches instead to QCA.

317 Power to require additional information

- (1) This section applies if—
 - (a) a person is required under this Act to give the Minister or the regulator a notice or copy of a document or information (the *advice*); and

⁵³ Section 6 (Act does not affect other rights or remedies)

- (b) the person gives the advice.
- (2) The Minister or the regulator may, by notice, require the person to give, within the reasonable time stated in the notice, written information about the matter for which the advice was given.
- (3) The person must comply with the notice.
Maximum penalty for subsection (3)—300 penalty units.

318 Confidentiality of particular information

- (1) This section applies if—
 - (a) a person gives information in response to—
 - (i) a direction under section 233; or
 - (ii) a requirement under section 245; or
 - (iii) a requirement under section 317 that relates to information given under section 233 or 245;⁵⁴ and
 - (b) the information is FOI exempt matter.
- (2) If an official acquires the information in the official's capacity as an official the official must not disclose the information to any one else, unless the disclosure is—
 - (a) made with the person's consent; or
 - (b) expressly permitted or required under another Act.
 Maximum penalty—100 penalty units.
- (3) In this section—

official means—

 - (a) the Minister; or
 - (b) the regulator; or
 - (c) a person who is, or has been, a public service employee.

⁵⁴ Section 233 (Directions for prices notification) or 245 (Regulator's power to require information from industry participant)

319 Application of provisions

- (1) This section applies if a provision of this Act applies any of the following (the *applied law*) for a purpose—
 - (a) another provision of this Act;
 - (b) another law;
 - (c) a provision of another law.
- (2) The applied law and any definition relevant to it apply with necessary changes.
- (3) Subsection (2) is not limited merely because a provision states how the applied law is to apply.

320 Delegation by Minister

- (1) The Minister may delegate the Minister's powers under this Act to an appropriately qualified public service officer or employee.
- (2) However, the Minister can not delegate the power to make an insufficiency of supply declaration.
- (3) The Minister may delegate the Minister's powers under chapter 3, part 4, division 2 to QCA.

321 Delegation by regulator

The regulator may delegate the regulator's powers under this Act to an appropriately qualified public service officer or employee.

321A Delegation by QCA

QCA may delegate, to the GRMO, QCA's functions under chapter 5A, part 5 to the extent the functions relate to provisions of an industry code concerning gas retail market services.

321B Reporting to Minister by QCA

- (1) QCA must, on or before each 31 December and 30 June, give the Minister a written report about the performance of—

- (a) its functions under this Act; and
 - (b) any of the Minister's functions under this Act that have been delegated to QCA.
- (2) QCA may, from time to time, give the Minister reports about any significant events in the State's processed natural gas market of which it considers the Minister ought to be aware, including, for example, systemic issues materially affecting consumers.
- (3) In this section a reference to the performance of a function includes the exercise of a power.

322 Approved forms

The regulator may approve forms for use under this Act.

323 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about any of the following—
- (a) the fees payable under this Act, including late payment fees;
 - (b) imposing a penalty of no more than 20 penalty units for a contravention of a provision of a regulation.

Chapter 7 Transitional provisions for Electricity and Other Legislation Amendment Act 2006

324 Definitions for ch 7

In this chapter—

amendment Act means the *Electricity and Other Legislation Amendment Act 2006*.

former, for a provision mentioned in this part, means the provision to which the reference relates is a provision of the pre-amended Act.

FRC day means the day the amendment Act, section 114 commences.

new, for a provision mentioned in this part, means the provision to which the reference relates is a provision of the post-amended Act, as affected by any relevant definitions under the post-amended Act.

post-amended Act means this Act as in force from the FRC day.

pre-amended Act means this Act as in force before the FRC day.

325 Conversion of customer retail contracts for particular small customers to standard contracts

- (1) This section applies on the FRC day if—
 - (a) immediately before that day, a customer retail contract under the pre-amended Act (the **existing contract**) was in force between a customer and a retailer for the provision of customer retail services to premises; and
 - (b) under the post-amended Act the customer is a small customer for the premises; and
 - (c) notified prices applied to the customer for the provision of the services to the premises.
- (2) The existing contract ends.
- (3) The ending of the existing contract does not affect rights or obligations accrued under it before the FRC day.
- (4) The customer and the retailer are, under new section 204, taken to have entered into a standard retail contract for the provision of the services to the premises.

- (5) New sections 204 and 207 apply to the standard retail contract as if it were a contract taken to have been entered into under that section.

326 Small customer may enter into negotiated retail contract before FRC day

- (1) This section applies if—
- (a) under the pre-amended Act, a customer is a non-contestable customer for premises; and
 - (b) the customer would, under the post-amended Act, be a small customer for the premises.
- (2) Despite former section 169, the customer may enter into a negotiated retail contract under the post-amended Act for the provision of customer retail services to the premises even though this Act is not in force in the form of the post-amended Act.
- (3) However, until the FRC day—
- (a) customer retail services can not be provided under the negotiated retail contract; and
 - (b) any customer retail contract under the pre-amended Act continues to apply for the provision of the services.
- (4) Also, it is taken to be a term of the negotiated contract that the customer may, by written notice to the relevant retailer given within 10 business days after the FRC day, terminate the contract without penalty.
- (5) The notice need not state a ground for the termination.

327 Transitional retail contracts

- (1) This section applies on the FRC day if—
- (a) immediately before that day, a customer retail contract under the pre-amended Act (the *existing contract*) was in force between a customer and a retailer for the provision of customer retail services to premises; and

- (b) in the 12 months before the FRC day, the customer at the premises consumed more than 1TJ, but less than 10TJ, of processed natural gas; and
 - (c) notified prices applied to the customer for the provision of the services to the premises.
- (2) The existing contract ends.
 - (3) The ending of the existing contract does not affect rights or obligations accrued under it before the FRC day.
 - (4) The customer and the retailer are taken to have entered into a new retail contract (the *transitional retail contract*) for the provision of the services to the premises.
 - (5) The terms of the transitional retail contract are the retailer's terms for retail contracts of the type to which this section applies, as published on the area retailer's website and given to QCA no later than 5 days before the FRC day.
 - (6) The retailer must, as soon as practicable after publishing the terms under subsection (5), give the customer a notice that the terms of the retailer's transitional retail contracts may be inspected on its website.
 - (7) The customer and the retailer are taken to have agreed to comply with the terms and to have entered into the transitional retail contract as a deed.
 - (8) New section 207 applies to the transitional retail contract as if a reference in the section to a standard retail contract were a reference to the transitional retail contract.
 - (9) This section is subject to the retailer of last resort scheme.

328 References to other particular contracts under pre-amended Act

- (1) In an Act or document, a reference to a contract of a following type (the *old type*) under the pre-amended Act is taken to be a reference to a type of contract under the post-amended Act stated opposite the old type—
 - (a) a customer connection contract—a connection contract;

- (b) a customer retail contract—a retail contract.
- (2) Subsection (1) applies subject to new sections 325 to 327.

329 Price publication requirements of area retailers for FRC

- (1) Each area retailer must, before the following day, publish and give the Minister and QCA a list of the indicative prices that it proposes to charge its small customers under a standard retail contract for the provision of customer retail services on the FRC day—
 - (a) if, before 31 March 2007, a day is prescribed under a regulation—the prescribed day;
 - (b) otherwise—31 March 2007.

Maximum penalty—500 penalty units.

- (2) For subsection (1), the indicative prices are the prices that the retailer reasonably estimates that it will be charging the customers for the services, other than for the following anticipated charges that it will pass on to them—
 - (a) network use of system charges;
 - (b) network FRC charges passed on to the area retailer from distributors;
 - (c) charges from the GRMO.
- (3) Each area retailer must, on the earlier of the following days, publish and give the Minister and QCA a list of its actual prices for the services—
 - (a) the day that is 20 days after the last of the charges mentioned in subsection (2) is fixed;
 - (b) the day that is 5 days before the FRC day.

Maximum penalty—500 penalty units.

- (4) A publication of actual prices under subsection (3) may be included in a publication of the area retailer's standard terms under new section 206, as that section applies because of new section 330.
- (5) In this section—

network FRC charges means charges for costs incurred by distributors in implementing the amendments to this Act under the amendment Act that, under their approved access arrangements, may be passed on to customers.

network use of system charges means charges by the relevant distributor for customer connection services and the transportation of processed natural gas.

publish means publish on the area retailer's website.

330 Area retailer's obligations about standard terms apply 1 month before FRC day

- (1) New sections 160, 205 and 206 apply to each area retailer as if the sections had commenced 1 month before the FRC day.
- (2) However, subsection (1) does not apply for the retailer's standard terms to the extent the terms are its prices for customer retail services.
- (3) Also, if the retailer gives a list as required under new section 329(3), the retailer may amend its standard terms to include the prices without complying with new section 206.

331 Price publication requirements of general retailers for FRC

Each general retailer must, before the FRC day, publish on its website and give QCA a list of its prices on the FRC day for its charges to small customers under a standard retail contract for customer retail services.

332 Existing mediated agreements

Former section 264 continues to apply for a mediated agreement under the pre-amended Act as if the section were still in force.

333 Existing orders on arbitrated disputes

Former section 265 continues to apply for an order made under the section as if the section were still in force.

Schedule 1 Decisions subject to review

section 271(1)

Section reference	Description of decision
31 or 36	Refusal of distribution authority application
56	Refusal of amendment application
58	Giving of suspension notice for immediate suspension of distribution authority
58	Fixing of period of suspension for distribution authority
62	Amendment, cancellation or suspension of distribution authority
65	Refusal of renewal application for distribution authority
69	Refusal of transfer application for distribution authority or to impose a condition on the transfer, other than a condition mentioned in section 69(5)
73	Refusal of surrender application for distribution authority or to impose a condition on the surrender, other than a condition mentioned in section 73(5)
87	Giving of work direction by public entity to distributor
151 or 156	Refusal of retail authority application
180	Refusal of amendment application
182	Giving of suspension notice for immediate suspension of retail authority

Schedule 1 (continued)

Section reference	Description of decision
182	Fixing of period of suspension for retail authority
186	Amendment, cancellation or suspension of retail authority
189	Refusal of renewal application for retail authority
193	Refusal of transfer application for retail authority or to impose a condition on the transfer, other than a condition mentioned in section 193(5)
197	Refusal of surrender application for retail authority or to impose a condition on the surrender, other than a condition mentioned in section 197(5)
243	Amendment of contingency supply plan
245	Requirement of industry participant to give the regulator information
268	Requirement of distributor, retailer or public entity to give the regulator information
314	Refusal of application to replace authority

Schedule 2 Dictionary

section 7

acceptance notice for—

- (a) chapter 2—see section 35(1)(d); or
- (b) chapter 3—see section 155(1)(d).

accounting period, for an on-supply agreement, see section 215(1).

advisory committee means an advisory committee established under section 257D.

appropriately qualified, for the performance of a function or exercise of a power, includes having the qualifications, experience and competence to perform the function or exercise the power.

approved access arrangement means an access arrangement approved by the relevant regulator under the Gas Pipelines Access Law.

approved form means the form approved by the regulator under section 322.

area distribution authority see section 23(2).

area distributor see section 23(3).

area retail authority see section 26(1).

area retailer see section 26(2).

area retailer obligation see section 201(2).

body corporate Act means any Act as follows—

- (a) *Body Corporate and Community Management Act 1997*;
- (b) *Building Units and Group Titles Act 1980*;
- (c) *Integrated Resort Development Act 1987*;
- (d) *Mixed Use Development Act 1993*;
- (e) *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*;

Schedule 2 (continued)

(f) *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984.*

code contravention notice see section 270R(1).

common area, of an on-supplier's premises, see section 214(1).

common area consumption, for an on-supplier's premises, see section 214(2).

conduct assurance see section 270S(1)(b)(ii).

connection contract see section 106(1).

consequential work see section 92(1)(b).

consequential work requirement see section 92(2).

consumption, of a substance, includes using it to produce heat, light or power or for air-conditioning or refrigeration.

content requirements, for a contingency supply plan, see section 239(1).

contingency supply plan, of an industry participant, means the industry participant's contingency supply plan made under section 237, as amended from time to time under section 243.

corresponding authority, for a distribution or retail authority, means an authority or licence, however called, issued under any of the following that is similar to the distribution or retail authority—

- (a) *Gas Supply Act 1996* (NSW);
- (b) *Gas Act 1997* (SA);
- (c) *Gas Industry Act 2001* (Vic);
- (d) *Gas Act 2000* (Tas);
- (e) *Energy Coordination Act 1994* (WA);
- (f) *Energy Operators (Powers) Act 1979* (WA);
- (g) *Gas Supply Act 1998* (ACT);
- (h) another law of a State relating to the transport or supply of processed natural gas.

Schedule 2 (continued)

covered pipeline means a pipeline that, under the Gas Pipelines Access Law, is a covered pipeline.⁵⁵

criminal history means history of convictions other than a spent conviction, for offences committed in the State or elsewhere.

customer see section 16.

customer connection services see section 19.

customer retail services see section 20.

decision notice for—

(a) chapter 2—see section 35(1); or

(b) chapter 3—see section 155(1).

defaulting retailer, for the retailer of last resort scheme, see section 249(a).

disconnect, for customer connection services, includes—

(a) cessation, curtailment and interruption; and

(b) a refusal to connect or reconnect.

distribution area see section 23(4).

distribution authority see section 21.

distribution officer, for a distributor, means a person appointed, under section 132, as a distribution officer for the distributor, whose appointment is still in force.

distribution pipeline see section 13.

distribution system see section 14.

distributor see section 22.

Electricity Act means the *Electricity Act 1994*.

energy ombudsman means the energy ombudsman under the *Energy Ombudsman Act 2006*.

excluded customer see section 17(4).

⁵⁵ See the Gas Pipelines Access (Queensland) Law, attachment, section 10.8, definition *covered pipeline*.

Schedule 2 (continued)

executive officer, of a corporation, means a person who is concerned with, or takes part in, its management, whether or not the person is a director or the person's position is given the name of executive officer.

first accounting period, for an on-supply agreement, see section 215(2).

FOI exempt matter means exempt matter under the *Freedom of Information Act 1992*.

gas infrastructure see section 75(1).

gas infrastructure work see section 75(2).

Gas Pipelines Access Law means all of the following—

- (a) the *National Gas (Queensland) Act 2008*;
- (b) the *National Gas (Queensland) Law*;
- (c) the *National Gas (Queensland) Regulations*.

gas retail market services see section 257B(1)(a).

general retail authority see section 26(4).

general retailer see section 26(5).

GRMO see section 257A(1).

holder, of an authority under this Act, means each person recorded in the register of authorities as its holder.

industry code means—

- (a) an initial industry code; or
- (b) an industry code made by QCA under chapter 5A and as amended from time to time under that chapter.

industry participant see section 236.

information notice, for a decision, means a notice stating each of the following—

- (a) the decision;
- (b) reasons for the decision;
- (c) the rights of—

Schedule 2 (continued)

- (i) review or appeal under this Act for the decision; or
- (ii) referral, under the *Energy Ombudsman Act 2006*, for the decision;
- (d) the period within which any review or appeal or referral must be started or made;
- (e) how the rights of review or appeal or referral must be exercised;
- (f) for a right of review or appeal—that a stay of a decision the subject of review or appeal under this Act may be applied for under this Act.

initial industry code means an initial industry code made by the Minister under chapter 5A and as amended from time to time under that chapter.

insufficiency of supply declaration see section 251.

insufficiency of supply direction see section 254(1).

large customer see section 17(3).

lot includes a parcel of land.

LPG, also called ‘LP gas’ and ‘liquefied petroleum gas’, means a substance that—

- (a) is in a gaseous state at standard temperature and pressure; and
- (b) is more than half propane, propylene (also called propene) or butane, in any combination; and
- (c) has been processed to be suitable for consumption.

LPG distribution pipeline means a pipeline that—

- (a) only transports LPG; and
- (b) would, other than for the fact that it only transports LPG, be a distribution pipeline as defined under section 13.

LPG distribution system means a system of pipelines, meters and other equipment that—

- (a) is only for LPG; and

Schedule 2 (continued)

- (b) would, other than for the fact that the system is only for LPG, be a distribution system as defined under section 14.

LPG distributor means a person who—

- (a) owns or operates an LPG distribution pipeline or LPG distribution system; and
- (b) provides services to premises that—
- (i) relate to the pipeline or system; and
 - (ii) would, if the pipeline or system was a distribution pipeline or system, be customer connection services as defined under section 19.

meter means a device used to work out, by direct measurement, the energy, mass or volume of processed natural gas transferred from one place to another.

MIRN means a meter identification registration number under an industry code.

MIRN premises—

- 1 A **MIRN premises** is premises, a part of premises or a group of premises—
 - (a) that, under an industry code, has an established metering installation with a MIRN; or
 - (b) for which, under an industry code, a metering installation with a MIRN is to be established.
- 2 However, the term does not include a premises of an excluded customer.

national gas agreement means the ‘Natural Gas Pipelines Access Agreement’ relating to third party access to natural gas pipeline systems entered into by the Commonwealth and all of the States on 7 November 1997, or the agreement as amended.⁵⁶

⁵⁶ A copy of the agreement is available for inspection free of charge at the department’s office at 100 George Street, Brisbane during office hours on business days.

Schedule 2 (continued)

negotiated retail contract see section 208(1).

notice means a written notice.

notified prices see section 228(3).

on a publicly controlled or other place includes over or under the place.

on-supplier see section 213.

on-supplier's premises see section 213(3).

on-supply agreement see section 217(4).

original decision see section 271(1).

Petroleum and Gas (Production and Safety) Act means the *Petroleum and Gas (Production and Safety) Act 2004*.

point-to-point distribution authority see section 23(1).

premises, of a customer, means premises owned or occupied by the customer.

prevent includes each of the following—

- (a) hinder;
- (b) obstruct.

pricing investigation see section 227A(1)(a).

processed natural gas see section 11.

proposed action for—

- (a) chapter 2—see section 60(1)(a); or
- (b) chapter 3—see section 184(1)(a).

prospective on-supplier see section 218(a).

prospective receiver see section 218(b).

public entity—

- (a) generally—see section 76; and
- (b) for a publicly controlled place—see also section 77(3).

public entity work see section 90.

publicly controlled place see section 77.

Schedule 2 (continued)

QCA means the Queensland Competition Authority established under the QCA Act.

QCA Act means the *Queensland Competition Authority Act 1997*.

QCA code objective see section 270F(1).

reasonably believes means to believe on grounds that are reasonable in the circumstances.

receiver, for an on-supplier, see section 213(4).

register of authorities means the register the regulator keeps under section 308.

regulator see section 8.

remedial action see section 96.

remedial action requirement see section 97.

retail area, for a retail authority, see section 26(3).

retail authority see section 24.

retail contract means a negotiated retail contract or a standard retail contract.

retailer see section 25.

retailer of last resort scheme means any retailer of last resort scheme made under chapter 4, part 4.

retail services application see section 198(1).

reticulated, for processed natural gas, see section 15.

review application see section 271(1).

review decision see section 274(1)(b).

reviewer see section 271(2).

review notice see section 278(1).

sell includes each of the following—

- (a) give or sell;
- (b) agree, attempt or offer to give or sell;
- (c) advertise to give or sell;

Schedule 2 (continued)

- (d) cause or permit to be given or sold;
- (e) give away for swap.

small customer see section 17(1).

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

standard retail contract see section 204(4).

standard temperature and pressure means an absolute pressure of 101.325kPa at a temperature of 15°C.

standard terms, for a retailer, see section 205(1).

Statewide newspaper means a newspaper or other publication generally circulating in the State.

substantial shareholder, in a corporation, means a person who under the Corporations Act, has a substantial shareholding in the corporation.

suitability criteria for—

- (a) chapter 2—see section 32(2); or
- (b) chapter 3—see section 152(2).

supply, for processed natural gas, includes the transportation or sale of processed natural gas.

transmission pipeline see section 12.

transmission pipeline licence means a licence under the Petroleum and Gas (Production and Safety) Act for a transmission pipeline.

warning notice see section 270R(1).

work direction see section 87(2).

Endnotes

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 July 2008. Future amendments of the Gas Supply Act 2003 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	1 July 2003	
1A	2004 Act No. 25 (amd 2004 Act No. 26)	31 December 2004	
1B	2005 Act No. 51	2 November 2005	
1C	2006 Act No. 9	15 March 2006	
1D	2006 Act No. 60	7 December 2006	
2	2006 Act No. 60 (amd 2007 Act No. 17; 2007 Act No. 29)	1 July 2007	
2A	2008 Act No. 11	31 March 2008	
2B	2008 Act No. 27	1 July 2008	

5 List of legislation

Gas Supply Act 2003 No. 29

date of assent 23 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (2003 SL No. 121)

amending legislation—

Petroleum and Gas (Production and Safety) Act 2004 No. 25 ss 1, 2(2), 969–989 (prev ss 909–929) (this Act is amended, see amending legislation below)

date of assent 12 October 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 31 December 2004 (2004 SL No. 308)

amending legislation—

Petroleum and Other Legislation Amendment Act 2004 No. 26 ss 1–2(1), 257, 69(2) sch (amends 2004 No. 25 above)

date of assent 12 October 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 13 October 2004 (see s 2(1))

Energy Legislation Amendment Act 2005 No. 51 s 1, pt 4

date of assent 2 November 2005

commenced on date of assent

Audit Legislation Amendment Act 2006 No. 9 pts 1, 11

date of assent 15 March 2006

commenced on date of assent

Electricity and Other Legislation Amendment Act 2006 No. 60 pts 1, 4, s 58 sch (this Act is amended, see amending legislation below)

date of assent 7 December 2006

ss 1–2, pt 4 hdg, s 58 (to the extent it relates to the amdts under s 167), 167 commenced on date of assent (see s 2)

remaining provisions commenced 1 July 2007 (2007 SL No. 15)

amending legislation—

Community Ambulance Cover and Other Acts Amendment Act 2007 No. 17**ss 1, 2(2), 37, 45–49 (amends 2006 No. 60 above)**

date of assent 23 April 2007

commenced on date of assent (see s 2(2))

Revenue and Other Legislation Amendment Act 2007 No. 29 ss 1, 10, 13**(amends 2006 No. 60 above)**

date of assent 15 June 2007

commenced on date of assent

Gas Supply Amendment Act 2008 No. 11

date of assent 17 March 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 31 March 2008 (see s 2)

National Gas (Queensland) Act 2008 No. 27 ss 1–2(1), 25–26

date of assent 9 May 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2008 (2008 SL No. 195 see also National Gas (South Australia) Act 2008 (SA) s 7)

6 List of annotations

Title amd 2006 No. 60 s 59**Main purposes of Act****s 3** amd 2006 No. 60 s 60**Gas-related matters to which Act does not apply****s 4** amd 2006 No. 60 s 61**PART 3—INTERPRETATION****Definitions****s 7** amd 2006 No. 60 s 58 sch**Division 2—Key definitions****What is “fuel gas”****s 9** om 2006 No. 60 s 62**What is “LPG”****s 10** amd 2006 No. 60 s 63(1)–(2)

om 2006 No. 60 s 63(3)

Subdivision 2—Processed natural gas**sdiv hdg** sub 2006 No. 60 s 58 sch**What is a “transmission pipeline”****s 12** amd 2006 No. 60 s 64**What is a “distribution pipeline”****s 13** amd 2006 No. 60 s 65**What is a “distribution system”****s 14** amd 2006 No. 60 s 66**When processed natural gas is “reticulated”****prov hdg** amd 2006 No. 60 s 67(1)**s 15** amd 2006 No. 60 s 67(2)**Who is a “customer”****s 16** sub 2006 No. 60 s 68**Types of customers****s 17** sub 2006 No. 60 s 68**Who is a “protected customer”****s 18** amd 2005 No. 51 s 12

om 2006 No. 60 s 68

What are “customer connection services”**s 19** amd 2006 No. 60 s 69**What are “customer retail services”****s 20** amd 2006 No. 60 s 70**What is a “distribution authority”****s 21** amd 2006 No. 60 s 71**Distributors and references to distributors****prov hdg** sub 2006 No. 60 s 72(1)**s 22** amd 2006 No. 60 s 72(2)–(4)**Types of distribution authority and their distributors****s 23** amd 2005 No. 51 s 13; 2006 No. 60 s 73**Retailers and references to retailers****prov hdg** sub 2006 No. 60 s 74(1)**s 25** amd 2006 No. 60 s 74(2)**Types of retail authority and their retailers****s 26** amd 2005 No. 51 s 14**CHAPTER 2—PROCESSED NATURAL GAS DISTRIBUTION****ch hdg** amd 2006 No. 60 s 75**Requirements for application****s 28** amd 2005 No. 51 s 15; 2006 No. 60 s 76**Public notice by regulator and submissions****s 29** amd 2005 No. 51 s 16

Competitive tender process for greenfield distribution authority**s 30** om 2005 No. 51 s 17**Deciding application****s 31** amd 2005 No. 51 s 18**Additional criteria for greenfield distribution authority application****s 33** om 2005 No. 51 s 19**Term of authority****s 34** amd 2005 No. 51 s 20**Issue and public notice of authority****s 37** amd 2005 No. 51 s 21**General conditions****s 40** amd 2004 No. 25 s 970**Obligation to operate and maintain distribution pipes****s 42** amd 2006 No. 60 s 77**Exclusive rights must not be contravened****s 44** om 2005 No. 51 s 22**Additional condition for greenfield distribution authority****s 45** om 2005 No. 51 s 22**Standard for distribution pipes****s 46** amd 2004 No. 25 s 971**Trustee's accounting functions****s 47** amd 2006 No. 9 s 27**Contingency practices and procedures****s 48** amd 2006 No. 60 s 78**Compliance with industry codes****s 50A** ins 2006 No. 60 s 79**Membership of energy ombudsman scheme****s 50B** ins 2006 No. 60 s 79**Amendments for which proposed action notice is not required****s 52** amd 2005 No. 51 s 23; 2006 No. 60 s 58 sch**Applying for amendment****s 55** amd 2005 No. 51 s 24**Conditions for amendment, cancellation or suspension****s 57** amd 2004 No. 25 s 972; 2006 No. 60 s 80**Applying for renewal****s 64** amd 2005 No. 51 s 25**Division 5—Service quality standards****div hdg** om 2006 No. 60 s 81

Standards about quality of customer connection services

s 74 om 2006 No. 60 s 81

What is “gas infrastructure” and “gas infrastructure work”

s 75 amd 2006 No. 60 s 82

References to distributor in pt 2 includes a reference to LPG distributor

s 75A ins 2006 No. 60 s 83

Right to carry out work on publicly controlled place

s 78 amd 2006 No. 60 s 84

General obligations in carrying out work

s 85 amd 2004 No. 25 s 973

Compliance with work direction

s 88 amd 2004 No. 25 s 974

Compliance with consequential work requirement

s 93 amd 2004 No. 25 s 975

Compliance with remedial action requirement

s 98 amd 2004 No. 25 s 976

Application of pt 3

s 102 amd 2005 No. 51 s 26

Deciding application

s 104 amd 2006 No. 60 s 85

Information notice for refusal of services

s 104A ins 2006 No. 60 s 86

Distributor’s obligation to propose terms

s 105 amd 2006 No. 60 s 87

Connection contract

prov hdg amd 2006 No. 60 s 88(1)

s 106 amd 2006 No. 60 s 88(2)–(3)

Cooling-off period for customer connection contracts

s 107 om 2006 No. 60 s 89

Commencement of customer connection services

s 108 amd 2006 No. 60 s 90

Limits on provision of customer connection services

s 109 amd 2004 No. 25 s 977; 2006 No. 60 s 91

Subdivision 3—Requirements for connection contracts

sdv 3 (ss 109A–109C) ins 2006 No. 60 s 92

Division 3—Changes to processed natural gas installation

div hdg amd 2006 No. 60 s 93

Obligation to give information to allow proposed changes

s 111 amd 2006 No. 60 s 94

Applying to change connection

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